



1                   BEFORE THE ARIZONA CORPORATION COMMISSION

2   IN THE MATTER OF THE APPLICATION       ) DOCKET NO.

3   OF ARIZONA PUBLIC SERVICE            ) L-00000D-09-0161-

4   COMPANY, IN CONFORMANCE WITH THE     ) 00143

5   REQUIREMENTS OF ARIZONA REVISED     )

6   STATUTES §§ 40-360, et seq., FOR     ( Case No. 143

7   A CERTIFICATE OF ENVIRONMENTAL       (

8   COMPATIBILITY AUTHORIZING THE         (

9   BAGDAD 115KV TRANSMISSION LINE       (

10   RELOCATION PROJECT, WHICH            (

11   INCLUDES THE RELOCATION OF A           (

12   115KV TRANSMISSION LINE BETWEEN      (

13   AN EXISTING CAPACITOR BANK           (

14   STATION, 0.5 MILES WEST OF THE       (

15   UNINCORPORATED TOWN OF BAGDAD,       (

16   YAVAPAI COUNTY, ARIZONA, AT          (

17   SECTION 10, TOWNSHIP 14 NORTH,       (

18   RANGE 9 WEST, G&SRB&M, AND AN        (

19   EXISTING MINE SUBSTATION, THREE      (

20   MILES NORTHWEST OF THE               (

21   UNINCORPORATED TOWN OF BAGDAD,       (

22   YAVAPAI COUNTY, ARIZONA, AT          (

23   SECTION 31, TOWNSHIP 15 NORTH,       (

24   RANGE 9 WEST, G&SRB&M.               (

25    ) EVIDENTIARY

  ) HEARING

Arizona Corporation Commission

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25 SITING COMMITTEE

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1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before the  
3 Power Plant and Transmission Line Siting Committee, at the  
4 Hampton Inn & Suite, 2000 North Litchfield Road, Goodyear,  
5 Arizona, commencing at 9:40 a.m. on the 18th day of May,  
6 2009.

7  
8 BEFORE: JOHN FOREMAN, Committee Chairman  
9 DAVID L. EBERHART, Arizona Corporation  
10 Commission  
11 PAUL W. RASMUSSEN, Department of Environmental  
12 Quality  
13 JESSICA YOULE, Department of Commerce Energy  
14 Office  
15 PATRICIA A. NOLAND, Appointed Member  
16 JEFF McGUIRE, Appointed Member  
17 MIKE WHALEN, Appointed Member  
18 BILL MUNDELL, Appointed Member  
19 MIKE PALMER, Appointed Member  
20 BARRY WONG, Appointed Member  
21

22 APPEARANCES:

23 For Arizona Public Service Company:

24 LEWIS AND ROCA, LLP  
25 By: Mr. Albert H. Acken  
40 North Central Avenue  
Phoenix, Arizona 85004

MICHELE E. BALMER  
Certified Reporter No. 50489

1 CHMN. FOREMAN: Let's call the meeting to order.  
2 My name is John Foreman. I'm the Chairman of the Arizona  
3 Power Plant and Transmission Line Siting Committee. This  
4 is a hearing into the application of Arizona Public  
5 Service Company for a Certificate of Environmental  
6 Compatibility authorizing the relocation of a 115kV line  
7 near Bagdad, Arizona. It's in our Case No. 143.

8 Let me ask Counsel for the Applicant to identify  
9 himself and those with him.

10 MR. ACKEN: Thank you, Chair Foreman. Bert Acken  
11 of the law firm of Lewis and Roca on behalf of the  
12 Applicant, APS. With me here today we have Paul Herndon,  
13 project manager for APS, as well as Kevin Duncan, the  
14 project manager for the environmental studies that were  
15 conducted by the Environmental Planning Group, or EPG.

16 CHMN. FOREMAN: Let me ask you, Mr. Acken, do you  
17 plan to make an initial opening statement?

18 MR. ACKEN: Chairman Foreman, a brief opening  
19 statement.

20 CHMN. FOREMAN: All right. We have some members  
21 of the public here, and I just wanted to let you know that  
22 I have received two requests to make a statement or public  
23 comment to the committee. I think we have public comment  
24 forms in the back someplace. If there are others who  
25 would like to make public comment, please fill one of

1 those forms out and bring them up. I'm going to have the  
2 two gentlemen who had indicated they wished to make a  
3 public comment do so after the opening statement from the  
4 Applicant. Obviously, the public is welcome to stay and  
5 watch or listen to what we do, conditioned upon  
6 appropriate behavior.

7 Let me do a brief roll call of our members.

8 Member Eberhart is not present yet.

9 Member McGuire is not going to be here today.

10 Member Mundell not present.

11 Member Noland.

12 MEMBER NOLAND: Here.

13 CHMN. FOREMAN: Member Palmer.

14 MEMBER PALMER: Here.

15 CHMN. FOREMAN: Member Rasmussen.

16 MEMBER RASMUSSEN: Here.

17 CHMN. FOREMAN: Member Whalen.

18 MEMBER WHALEN: Here.

19 CHMN. FOREMAN: Member Wong, not present yet.

20 Member Youle.

21 MEMBER YOULE: Here.

22 CHMN. FOREMAN: All right. We'll show we have a  
23 quorum.

24 Is there any preliminary matter that we need to  
25 address before we move into openings?

1 MR. ACKEN: We have none, Chairman.

2 CHMN. FOREMAN: All right. Why don't you give us  
3 a brief overview, then, of your project.

4 MR. ACKEN: Thank you, Chairman Foreman, members  
5 of the committee.

6 APS has requested a Certificate of Environmental  
7 Compatibility to relocate a 115 kilovolt transmission line  
8 that serves the Freeport-McMoRan, or FMI, copper mine in  
9 Bagdad, Arizona. I want to take a brief moment and first  
10 of all orient you to where this project is located,  
11 because I don't know how many, if any, of you have been to  
12 Bagdad, Arizona. So I thought it would be helpful just to  
13 start off briefly and show you on the map where that is.

14 So once Dave gets the sound set up here, I'll  
15 have him move ahead.

16 As you can see on the map on the right screen,  
17 Bagdad is located in western Yavapai County. It is along  
18 US-93, which is the road that you take to get from Phoenix  
19 to Las Vegas. As we zoom in on the next slide, you can  
20 see very close here is the Town of Bagdad. Here is US-93,  
21 and this is the county line between Yavapai and Mohave  
22 County.

23 In our direct case, we will explain why this  
24 project is needed, describe the route and the public  
25 process APS used, and identify the environmental effects

1 associated with the project.

2 Dave, if you could flip forward to the next  
3 slides.

4 I want to start off by pointing out this is a  
5 unique project. One thing that makes it unique, as we can  
6 see, we have no intervenors. Another thing that makes it  
7 unique is that this project is designed to address an  
8 existing client need. There is a current APS line that  
9 serves the Bagdad Copper Mine, and FMI has requested that  
10 APS relocate that line in order to allow FMI to proceed  
11 with its approved mine expansion.

12 Let me take a moment and show you on the  
13 right-hand slide, there is the capacitor bank where the  
14 project will start. The existing line is shown in brown,  
15 and the new line is this red line. And that is what APS  
16 is requesting here today. The Town of Bagdad is located  
17 right in this area on this map, which is Figure 1, and you  
18 have -- that figure is also on the placemat in front of  
19 you. On that map you see a few different colors. State  
20 lands are shown in blue, BLM lands are shown in yellow,  
21 and private lands are shown in gray.

22 Most of the private lands in the study area are  
23 lands owned by FMI. There are some lands owned by one  
24 individual, Edgar Kellis, who his residence is right there  
25 in that southern corner, southeastern corner of the

1 project, and he also has some lands within the BLM areas  
2 as well. The project is designed so that it does not  
3 cross any lands owned by Mr. Kellis. The project crosses  
4 BLM lands, it briefly crosses onto state land, and then  
5 crosses FMI lands. Because it crosses BLM lands, APS has  
6 had to go through a NEPA process, and Mr. Herndon and  
7 Mr. Duncan will explain that.

8           The next bullet you see with respect to public  
9 support, this project does have the support of FMI. It  
10 has the support of Mr. Kellis, the nearby landowner, and  
11 it currently has the support of BLM. They are in the  
12 process of completing their NEPA analysis, but all signs  
13 point to a successful resolution of that process.

14           Recently, the State Land Department has raised  
15 some concerns with the portion of the route that crosses  
16 briefly onto state land. And that's in the southern area,  
17 and it's only for -- I believe it's less than half a mile.  
18 And Mr. Herndon will explain why the route that we've  
19 brought forward does cross onto state land briefly. But  
20 otherwise, the project has the support.

21           The Town of Bagdad, just so you know, is a  
22 company-owned town. So we have not heard any negative  
23 feedback from the residents in Bagdad as this line is  
24 needed to support the mine expansion.

25           And then the last component of our testimony will

1 be to discuss the environmental effects. This line is  
2 located in a disturbed mining area, and, therefore,  
3 impacts to biological resources, cultural resources, and  
4 visual resources are minimized.

5 This project is very consistent with land  
6 management land use plans for the area, and, in fact, is  
7 needed so that the mine can proceed with its approved land  
8 plan.

9 So that is the scope of our testimony. We have  
10 two witnesses today. Mr. Herndon will discuss the project  
11 need, discuss the route in greater detail, and discuss the  
12 public process that APS engaged in. Mr. Duncan will  
13 testify as to the environmental analyses that he  
14 conducted. He will present a virtual tour, and he will  
15 provide his opinion as to the environmental compatibility  
16 of the project.

17 One thing I want to do is briefly identify the  
18 exhibits and give you a frame of reference. The  
19 application is separately bound and you should all have a  
20 copy. We handed out this morning a three-ring binder with  
21 our additional exhibits. APS-2 is the slides for  
22 Mr. Herndon, and APS-3 are the slides for Mr. Duncan. And  
23 the way that will work is if you see on the screen the  
24 slides on the left and the slides on the right will match  
25 precisely what is in the binder. And so every time one of

1 the slides on the screen changes, you can flip the page in  
2 the binder to follow along.

3 And with that, we're prepared to go forward with  
4 our direct case after public comment.

5 MEMBER PALMER: Mr. Chairman, I have a question  
6 for Mr. Acken.

7 CHMN. FOREMAN: Member Palmer.

8 MEMBER PALMER: You used the phrase, "Bagdad is a  
9 company town." What you really mean is that it's  
10 unincorporated, correct? It's an unincorporated community  
11 similar to Ajo or Morenci?

12 MR. ACKEN: It's a company -- Mr. Palmer, it's a  
13 company-owned town. So I don't know how that relates to  
14 Ajo or some of the others, but --

15 MEMBER PALMER: Ajo and Morenci are  
16 unincorporated communities that are, in essence, company  
17 towns, which means that they're not represented by a city  
18 council or mayor, that they're represented by the board of  
19 supervisors of that county.

20 MR. ACKEN: That is correct. And there is a  
21 letter in your packet, and Mr. Herndon will discuss the  
22 letter of support from the Yavapai County Supervisors.

23 MEMBER PALMER: That's why I raised the  
24 clarification. Thank you.

25 CHMN. FOREMAN: Very good. We have a couple of

1 members of the public who wanted to comment at this stage.

2 Let me ask first Mr. Chris Franks.

3 If you would come forward, sir. Just tell us who  
4 you are and, if you would, please spell your last name for  
5 the court reporter, and tell us your interest in this  
6 project and what you have to say.

7 MR. FRANKS: You bet. Good morning,  
8 Mr. Chairman, members of the committee. My name is Chris  
9 Franks, F-R-A-N-K-S. I'm a land resource analyst with  
10 Freeport-McMoRan corporation, headquartered in downtown  
11 Phoenix.

12 I'm here today to fully support and let you know  
13 that we have requested APS to move forward with this  
14 project to really accomplish two business purposes for our  
15 company. Namely, the movement or relocation of the  
16 existing 115kV line out of our area of operation under our  
17 mine expansion plans; and secondly, to upgrade the  
18 existing line to current engineering standards as the  
19 existing line was built some decade ago.

20 You'll hear the specifics of the testimony via  
21 Mr. Herndon and Mr. Duncan, but I will be available after  
22 the conclusion of the testimony to answer any questions  
23 that you might have. Thank you.

24 CHMN. FOREMAN: Very good. Thank you.

25 Next, Edward Dietrich from the Arizona State Land

1 Department.

2 MR. DIETRICH: Mr. Chairman, members of the  
3 committee, my name is Edward Dietrich, D-I-E-T-R-I-C-H.  
4 I'm in the planning section of the State Land Department.

5 And the first thing I want to make clear is that  
6 the land department is not opposed to the corridor that's  
7 been presented today. However, our objection or our  
8 issue, I guess, is a process issue more than a substance  
9 issue. We learned a great deal from the TS-5 to TS-9  
10 experience. I think maybe we all did in one way, shape,  
11 form or another.

12 But what we learned is that the process should  
13 begin with a planning effort on a collaborative basis  
14 between an applicant and the land department, which would  
15 establish possible corridors or alternative corridors that  
16 can be agreed upon. The second step should be the public  
17 process with the siting committee and the Corporation  
18 Commission, and the third step should be the application  
19 process.

20 In this case, we've been processing an  
21 application for several months now for a 100-foot  
22 right-of-way within the corridor that is really before the  
23 committee today, and we just don't think that that's  
24 appropriate. We think that you should complete your work  
25 before we process applications. And just the point is

1 that that's the approach that we're going to take, and we  
2 wanted to make sure that everybody was aware of that.

3 Thank you.

4 CHMN. FOREMAN: Thank you. Now let me ask you a  
5 question or two about that. Have you addressed your  
6 concerns to the Corporation Commission about the sequence  
7 that is involved in processing these matters?

8 MR. DIETRICH: We have not. This concern just  
9 really came up, oh, in the last two or three weeks that  
10 we've become aware of these things. And I'm not quite  
11 sure how we should do that, but we intend to do that.

12 CHMN. FOREMAN: I would encourage you to do that.  
13 I certainly would agree that it would be helpful to have  
14 some sort of coordinated set of understandings about how  
15 to process these matters so that everybody who needs to  
16 study them and talk about them and make decisions about  
17 them does it in a way that's coordinated so that we don't  
18 end up at cross purposes with each other.

19 MR. DIETRICH: And we want to make sure that the  
20 committee knows that we didn't intend in any way, shape,  
21 or form to be out of step with the public process. We are  
22 faced with lots of concerns that the state agencies are  
23 concerned with in terms of personnel and resources, but  
24 we're going to try to do this better in the future.

25 CHMN. FOREMAN: Good. Thank you very much for

1 coming and talking to us.

2 All right. And the record should show the  
3 presence of Members Eberhart and Wong now.

4 Let's proceed to testimony. Counsel, call your  
5 first witness.

6 MR. ACKEN: Thank you, Chairman Foreman. APS  
7 calls Paul Herndon.

8 CHMN. FOREMAN: Mr. Herndon, would you like an  
9 oath or affirmation?

10 MR. HERNDON: Oath is fine.

11 CHMN. FOREMAN: Raise your right hand, please.

12 (MR. HERNDON WAS DULY SWORN.)

13 CHMN. FOREMAN: Please tell us your name, and  
14 spell the last name for the court reporter.

15 THE WITNESS: My name is Paul Herndon. Last name  
16 is spelled H-E-R-N-D-O-N.

17 CHMN. FOREMAN: Counsel, you may proceed.

18 MR. ACKEN: Thank you.

19

20 PAUL HERNDON,  
21 called as a witness on behalf of the Applicant, having  
22 been first duly sworn by the Chairman to speak the truth  
23 and nothing but the truth, was examined and testified as  
24 follows:

25

## 1 DIRECT EXAMINATION

2

3 Q. (BY MR. ACKEN) Mr. Herndon, please provide the  
4 committee with an overview of your professional  
5 background.

6 A. I'm currently a senior project siting manager for  
7 Arizona Public Service Company. I've been employed with  
8 Arizona Public Service Company a little over 32 years. I  
9 have been responsible for siting numerous 500 and 230kV  
10 transmission systems throughout the state.

11 My siting experience is approximately 19 years  
12 within the company. Through that time a good portion of  
13 my experience has been in the real estate services  
14 department or right-of-way department within the company.  
15 Therefore, I have a great deal of experience in real  
16 estate and education with regard to real estate matters.

17 And currently, I'm a senior -- I have a senior  
18 designation within the International Right-of-Way  
19 Association, which is a professional organization for  
20 right-of-way professionals. I was the local chapter  
21 president for the Chapter 28 of the IRWA in 1999. I've  
22 been a former director, a voting director within that  
23 professional organization and spent a couple of years on  
24 the International Utilities Committee.

25 Q. What has been your previous experience in siting

1 cases before this committee?

2 A. The screen on the -- or the graphic on the left  
3 screen shows a number of projects that I was the project  
4 manager for and actually testified before the state siting  
5 committee. It began with Case 85 and went through fairly  
6 recently Case 135. Those were a number of 500kV and 230kV  
7 transmission line siting projects that equal about  
8 250 miles of transmission line that I personally manage  
9 within the state of Arizona.

10 Q. What topics will you cover in your testimony  
11 today?

12 A. I'm going to cover the project overview and  
13 how we addressed the project need, needing to manage the  
14 requirements that FMI has asked us to take a look at with  
15 regard to the project. I'll talk about the project  
16 benefits and the need, obviously. I'll go into fair  
17 detail about the project description and how the  
18 particular proposed route evolved over some time. And  
19 then, lastly, I'll talk about the public participation  
20 effort.

21 I would like to take a few moments and, if I  
22 could, Mr. Acken referred to the map on the right screen,  
23 and we'll be using that significantly through our  
24 presentation this morning. And I would like to just again  
25 show some of the major details or components of the map.

1           Again, this map is in the Bagdad area, the Town  
2 of Bagdad is shown in that particular location. The black  
3 line that surrounds the area is the project study area.  
4 That is actually a 2-mile wide buffer based on 2 miles  
5 from the existing line and 2 miles from the proposed  
6 alignment.

7           As he alluded to in his opening remarks, the  
8 colors on the map represent Arizona State Trust Lands in  
9 blue; yellow, Bureau of Land Management lands administered  
10 by the Kingman Field Office of the BLM; the gray are  
11 private lands primarily owned by Freeport-McMoRan in the  
12 area. However, there is one ranching parcel, private  
13 parcel in this area owned by Mr. Ed Kellis, as well as  
14 Mr. Kellis owns some rights with regard to the mining  
15 claims in some of the other gray areas that you see on  
16 this map. We have a better map a little later that will  
17 show that more definitively, and it shows the private  
18 parcels shown in green.

19           Again, the purpose today is to relocate an  
20 existing 115kV line that is shown by the blue or the brown  
21 line on the map. It's approximately 3 miles in length.  
22 It begins at APS's existing capacitor bank station in kind  
23 of the middle right-hand side of the right-hand side of  
24 the map this area, and also ends or terminates at the FMI  
25 substation in the northwest corner or quarter of the map.

1           The red line, again, is the proposed action, the  
2 proposed route. There are some other existing lines in  
3 the area. There's a 69kV line shown in green on the map  
4 as well as a 12kV line that is shown in yellow, although  
5 it's hard to see on this particular map. Anyway, this is  
6 the map that we'll be referring to.

7           One last point is the polygon that you see in  
8 this particular area is a portion of the mine expansion  
9 plan that Mr. Franks alluded to in his public comments,  
10 and it's one of the primary reasons that we are looking to  
11 relocate this particular line.

12         Q. How does this project compare to others that you  
13 have managed?

14         A. Mr. Acken alluded to this being a unique project.  
15 In my history of siting lines for APS in Arizona, this is  
16 a very, very unique project. And I think it's important  
17 to note the differences between this project and some of  
18 the others, because many of the things that you have heard  
19 and seen in former transmission line siting cases are  
20 different on those versus what you're going to hear about  
21 today. So I think that's an important thing to talk  
22 about.

23           First off, one of the things that we typically  
24 deal with in siting transmission lines, at least for APS  
25 in the past, has been it's a brand new line, typically,

1 and we're looking at trying to find -- to serve a  
2 particular need; to go from Point A to Point B in a new  
3 area that a line hasn't been, you know, there before.

4           This case is not a new line. In fact, this line  
5 has been in service for several decades. It serves a very  
6 important industrial customer for APS, which is the Bagdad  
7 mine. So this project, the need for this project is  
8 inherent. It already has a need, and we're wanting to  
9 maintain that particular need.

10           The other difference or one of the other  
11 differences is this line, since it is existing, we're  
12 moving a small portion of an existing line. Again, about  
13 3 miles of line is what we're relocating. The new line  
14 proposed route is about 5.3 miles, so a little over  
15 5 miles for the new alignment.

16           The line is entirely on lands either owned by  
17 Freeport-McMoRan, the customer in the area, or Bureau of  
18 Land Management land. The yellow on the map, or a very  
19 small portion, about four-tenths of a mile on Arizona  
20 State Trust lands in the blue.

21           I think the important part of that is in many of  
22 the cases that you have seen before this committee in the  
23 past, there's been a large number of intervenors here. We  
24 don't have that today, obviously. And this line or this  
25 particular project does not cross any private lands other

1 than the mine, BLM, or the state.

2 Another point that I wanted to make is that the  
3 voltage of this line is 115kV. This is in the lower range  
4 of -- in fact, the lowest range of transmission that APS  
5 has in our system. Many times you have heard us talk  
6 about 230kV lines or very recently a 500 and a 230kV line.  
7 I think the significance here that I want to point out is  
8 the structures with regard to this particular project are  
9 much smaller than the ones that we typically have seen in  
10 past cases.

11 Another important point here is that the project  
12 is in a very highly disturbed area. Our virtual tour that  
13 Kevin is going to go through here in a little while, it  
14 will point that out significantly where the mine is a very  
15 dominant feature in this landscape and it highly --  
16 creates high disturbance in the environment. And so this  
17 line really is fairly insignificant with regard to the  
18 disturbance that already occurs in the area.

19 The project has not been controversial at all.  
20 We've been in a NEPA process for approximately a year.  
21 And I believe that there's a letter in your supplemental  
22 packet from the BLM that indicates that thus far through  
23 the federal process there have been no significant issues  
24 or impacts.

25 The project has primarily been engineered, and

1 that's why we could ask for a narrow corridor in this  
2 particular proceeding. Many times you have heard us talk  
3 about corridors for flexibility purposes in the 2,000,  
4 3,000, sometimes greater than 3,000-foot widths. And in  
5 this particular case, because FMI is paying APS to do this  
6 work, in fact, they paid us in advance in many instances  
7 to do the engineering work on this project, we've been  
8 able to put a lot of upfront work within this project and  
9 identify a centerline. The line has not been finalized  
10 yet as far as its exact location, but we have a pretty  
11 good idea where this line is going to go and feel that we  
12 can operate within a much less wide corridor than you have  
13 heard in other projects.

14 And then the last portion that I want to mention  
15 is, again, we've been in a NEPA process for about a year  
16 with the Kingman Field Office for the BLM. We filed a  
17 right-of-way application with them about a year ago. And  
18 we expect that they will conclude the final stages of the  
19 NEPA process and issue what is known as a finding of no  
20 significant impact and grant APS a right-of-way to  
21 construct this line on BLM lands in the coming weeks.

22 MR. ACKEN: Mr. Herndon, if you would take a  
23 moment and explain exactly why this project is needed,  
24 although I see a question.

25 CHMN. FOREMAN: If we can stop just a minute.

1 Member Eberhart had a question.

2 MEMBER EBERHART: Yes, thank you, Mr. Chairman.

3 Mr. Herndon, as long as we're talking about  
4 unique features of the project and also project costs, I  
5 had a question about who was going to pay for the  
6 construction of this proposed facility.

7 THE WITNESS: Committee Member Eberhart, the  
8 project is being paid entirely by Freeport-McMoRan.

9 MEMBER EBERHART: Thank you.

10 THE WITNESS: And they've already paid us, like I  
11 say, for some of the upfront engineering costs. And the  
12 siting costs, we've been billing them and they've been  
13 paying us as we go on that.

14 MEMBER EBERHART: So just to close the loop, this  
15 is not going to be -- since this project is at the sole  
16 request of the mining company, they're paying for it, it's  
17 not going to have any effect on the ratepayers' costs for  
18 APS?

19 THE WITNESS: That's exactly correct.

20 MEMBER EBERHART: Thank you.

21 MEMBER MUNDELL: Am I up?

22 CHMN. FOREMAN: Yeah.

23 MEMBER MUNDELL: Thank you, Mr. Chairman.

24 Good morning. Just a follow-up. Does that  
25 include all costs? That includes attorneys' time,

1 everything? Engineering, planning, everything is going to  
2 be paid for by the mine?

3 THE WITNESS: That's correct.

4 MEMBER MUNDELL: Okay. Thank you.

5 CHMN. FOREMAN: Member Youle.

6 MEMBER YOULE: In terms of the existing line  
7 that's out there, is that under a CEC currently that  
8 you're relocating?

9 THE WITNESS: That's a very good and interesting  
10 question. That's another unique feature about this  
11 project, actually, and I'll give you a little bit of  
12 history about that.

13 The existing line, which actually comes from the  
14 Prescott area, obviously off the map, to the capacitor  
15 bank station and actually up to about that point right  
16 there, about half of the existing line that we're  
17 relocating is pre-CEC. So it was built prior to the state  
18 having the requirement to go through a state siting  
19 effort. In about 1977, the line was actually extended  
20 from about that point about 2.7 miles, I believe was the  
21 distance, up to the Bagdad mine substation. That  
22 particular project was certificated in Case 29.

23 An interesting thing, I read some notes that  
24 Chair Foreman put together when he addressed the State Bar  
25 a few weeks ago, and he indicated in his notes that that

1 appears to be one that may have not been signed by the  
2 Commission, or something of that matter. So I think  
3 that's another unique feature of this line.

4 But when it's all said and done, that line will  
5 all be removed and the new line will be in place per this  
6 certificate.

7 MEMBER YOULE: And to the extent that there is a  
8 CEC, would that be abandoned, then, by APS?

9 THE WITNESS: I believe that's a legal question.

10 MR. ACKEN: Member Youle, and that would be the  
11 Applicant's intent, yes, that the area for which that CEC  
12 exists is going to be taken over by the mine expansion, so  
13 there would be no need for that line in the future.

14 MEMBER YOULE: Okay.

15 CHMN. FOREMAN: And just to make the record  
16 complete on this, when I did my survey of the prior CECs  
17 approved by the Line Siting Commission, there's a separate  
18 file for those. And when I went through, there was only  
19 one CEC that did not have a signed approval by the  
20 Corporation Commission with the file that I received, and  
21 that was No. 29. I had no idea it was related to this  
22 project, and I have no idea whether there is, in fact, a  
23 signed approval in some other file that I was not shown,  
24 but I found that to be curious.

25 THE WITNESS: We did, too.

1 CHMN. FOREMAN: All right. Please proceed.

2 MR. ACKEN: Thank you.

3 Q. (BY MR. ACKEN) Mr. Herndon, if you would take a  
4 moment and explain why this project is needed.

5 A. Certainly. Again, about the end of 2007, and, in  
6 fact, at the time Phelps Dodge approached APS and asked us  
7 what it would take to move this particular portion of the  
8 line. Obviously, since that time, Freeport-McMoRan has  
9 acquired Phelps Dodge and we're now working with FMI, but  
10 it's really generally the same cast of characters.

11 The issue is that they have an existing mine  
12 expansion -- approved mine expansion plan that is --  
13 actually, the mining area is shown on the right map in the  
14 kind of tan colors. So you can see there's a significant  
15 amount of area that the current mine plan covers.

16 And today, the one portion of that component of  
17 that particular expansion plan is what is known as the  
18 south waste rock expansion plan area, and that's this  
19 polygon here. And as you can see, the line runs right  
20 through the middle of the existing line.

21 You can see better when we do our virtual tour,  
22 but when I talk about waste rock areas, these are  
23 mountains of waste rock. In fact, in that particular area  
24 where the line is today, at some point in time the  
25 elevation of rock in that area will be taller than the

1 poles are in that area. So a significant amount of rock.

2 But as you can see, the existing line does  
3 continue to go through portions of the mining operation  
4 area. And the alignment of the proposed line takes the  
5 line, a fair amount of the line significantly out of the  
6 expansion plan area and out of harm's way, so to speak.

7 So anyway, the first point is, is that the  
8 relocation of the existing line will allow the mine  
9 operator to continue to operate their mine and to continue  
10 to expand their mine without interference from the  
11 existing line.

12 The relocated transmission line, obviously, will  
13 continue to provide electrical service for the mine  
14 itself. The one point that I want to point out here is  
15 that this line today and in the future is what we refer to  
16 as a radial line. There are really no other lines that  
17 feed into this. So when the line goes out of service for  
18 whatever reason, weather related or electrical  
19 malfunction, basically the mine is shut down until it goes  
20 back into service.

21 And we believe, and I believe Mr. Chris alluded  
22 to it in his public comment, that the new line will be  
23 built to new standards. The old line is built on wood  
24 poles. The new line will be built on steel poles. And we  
25 believe that that adds a function of additional

1 reliability, as well as getting it out of -- a good  
2 portion out of the mine expansion area increases the  
3 safety for the line and decreases the possibility that  
4 someone can -- you know, some of the trucks that they run  
5 out there are as big as this room. They could actually  
6 run into the line and knock it down. So we believe that  
7 adds some safety and reliability to the area and to the  
8 project and the mine.

9 Q. Turning to the next component of your testimony,  
10 the project description, please start by describing the  
11 study area and the jurisdictions in which the project is  
12 located in.

13 A. Basically, I already mentioned the study area.  
14 Again, it's a 2-mile buffer based on two miles away from  
15 the existing line and two miles away from the proposed  
16 line.

17 The study area is solely and totally within the  
18 county of Yavapai County. We have had some discussions  
19 with them, which and I'll talk about a little later on in  
20 my presentation. About 75 percent of the project will  
21 either be on BLM land or State Trust Lands, so there's a  
22 good portion of it that will be on nonprivate lands.

23 The only private lands that the line will cross  
24 do belong to FMI. The current line is there today by an  
25 exclusive easement. The new line on FMI land will be

1 there by exclusive easement, and we will simply relinquish  
2 the old easements and get new easements for the portion of  
3 the line that's on FMI land.

4 Mr. Kellis, as I mentioned earlier, owns a ranch  
5 in this particular area. We've met with Mr. Kellis. I'll  
6 talk about that a little bit later, but he also has some  
7 mining claims in the middle portion of the map that are  
8 shown a little bit better on a map that we'll talk about  
9 that shows some alternatives that we considered but  
10 eliminated. And I think that's all I have to mention  
11 about that particular map.

12 Q. What factors did you evaluate as part of the  
13 route selection process?

14 A. The main thing that I want to mention here is we  
15 looked at a number of factors when we considered how we  
16 were going to do this project. Obviously, the first thing  
17 that we needed to consider was customer need. They asked  
18 to us move the line, and it serves an existing need, so we  
19 needed to make sure that we could continue to meet that  
20 need. So that was one of the main points that we looked  
21 at with regard to factors to consider for the project.

22 Secondly, and I think you'll see shortly in the  
23 virtual tour, the terrain in this area is significant.  
24 It's a very remote, rocky, mountainous area. And so  
25 engineering was a consideration and just the ability to be

1 able to design a line that could be built was a major  
2 factor.

3           We always take a look at regulatory input and our  
4 ability to acquire the necessary regulatory approvals. In  
5 this particular case, it's significant because if you  
6 imagine we're trying to get from this point to that point,  
7 anything that you go west you have to cross BLM land to do  
8 that. So we knew up front that we were going to have a  
9 federal process, a NEPA process. And so we started  
10 working early on with the BLM to make sure that we could  
11 accomplish that.

12           One of the interesting points, and Mr. Dietrich  
13 talked about it a little while ago, is a small piece on  
14 state land. I'm going to get into this in a little more  
15 detail a little bit later, but it was always our  
16 preference initially to not bring another state agency  
17 into the mix on this thing, and we struggled with the  
18 concept to even do that.

19           But I think you'll see a little bit later on the  
20 reason that we did that, and I believe it makes very good  
21 sense what we've done, because there's a very large  
22 boulder field in this area that you will see later on with  
23 our virtual tour.

24           Obviously, you know, how the line is compatible  
25 with the area, so the environmental compatibility is

1 something that we always look at. The NEPA process as  
2 well as what we go through with regard to state process,  
3 and a number of environmental studies that Kevin Duncan  
4 managed, and he'll talk about them in great detail in a  
5 little bit.

6 Right-of-way acquisition is always something that  
7 we consider, the ability to acquire the land rights for  
8 the project. So that was something that we considered.  
9 And cost is something that we considered here as well,  
10 because Freeport-McMoRan was paying us to move this line,  
11 and they had some concerns about cost. But again, we  
12 believe that we've got a good mix here with the line  
13 location and were able to, to some degree, manage costs.  
14 Because many of the other route alternatives that we  
15 looked at had a significant amount of ground disturbance  
16 and would require much more access road building, which is  
17 really a very costly component with regard to this effort.

18 Q. Mr. Herndon, you mentioned some route  
19 alternatives. Describe specifically the alternatives that  
20 you considered in this project.

21 A. I'm going to be referring now to the map on the  
22 right screen. And I believe it can be found in -- it's in  
23 the application. Actually, this map is not in the  
24 application. It can be found in your supplemental packet.  
25 There's one much like this in the application, but it

1 doesn't include the green land component that we're  
2 showing here. But I think --

3 Q. Before you continue, the map that's currently on  
4 the screen has been marked as "E" in APS-2?

5 A. That's correct.

6 Q. Okay. Thank you. Please continue.

7 A. One of the things that I wanted to point out and  
8 one of the issues that the State Land Department had when  
9 we met with them early on was whether or not we had  
10 actually looked at routing alternatives for this project.  
11 The route that we're looking at here today actually  
12 evolved over a period of time, but we really looked at  
13 about 17 miles of routing alternatives before we came up  
14 to the preferred alternative here. I want to talk about  
15 some of these in some detail.

16 When FMI first approached us, or, actually,  
17 Phelps Dodge first approached us to take a look at moving  
18 the line, they actually gave us a piece of paper and it  
19 had a couple of lines drawn on it. We refer to them as  
20 FMI Options 1 and 2. And FMI Option 1 is actually -- I  
21 think it's a purple line. I can't get the colors from  
22 this distance. But it's basically this line here that I'm  
23 showing. And that was one of the ones they wanted us to  
24 consider, so we did. We took a look at that option. And  
25 after careful consideration, it was eliminated because it

1 crossed the edge of an existing piece of private property,  
2 the green property right there that is owned by  
3 Mr. Kellis.

4           It placed the line on mountain tops along the  
5 area, which would have had a much more significant visual  
6 impact for the project. It did not follow existing access  
7 in any way, shape, or form. So it would have required  
8 extensive access road building, which would have created  
9 an enormous amount of ground disturbance, and, quite  
10 frankly, would have drove the cost of the project up.

11           So the second routing alternative that they  
12 brought forward to us we called FMI Option No. 2.  
13 Actually, it starts at the capacitor bank station and it's  
14 the blue dashed line that kind of comes at a more direct  
15 line across to the west and then works its way north to  
16 the substation. So we took a look at that one as well.

17           Some of the issues that that one had was it  
18 really didn't get it fully out of the expansion area of  
19 the south waste rock expansion. It would have still  
20 placed a large portion of the line in an area that the  
21 mine is already operating in, if you recall the map I  
22 showed earlier with the tan colors on it. Again, the line  
23 was on mountain tops. It would have been very visual,  
24 access roads were an issue, greater cost, more expensive  
25 to build, so we kind of eliminated that particular route.

1           What APS then endeavored to do was to kind of  
2 meld those two together, if you will, and we call that APS  
3 Option 3. And it's shown in the -- I believe it's kind of  
4 an orange or red color. Anyway, it's a dashed line that  
5 starts at the substation on the right side and then came  
6 across, and then worked its way back to the north as well.

7           What APS endeavored to do there was to kind of  
8 take the line off the peaks of the mountains, which we  
9 were able to do, but the primary problem with that  
10 particular option was it didn't follow really any existing  
11 access, would have created large amounts of ground  
12 disturbance to build roads, would have been more  
13 expensive, et cetera.

14           So really, we were starting to narrow in on  
15 needing to bring the line further to the south to take  
16 advantage of these existing roads and create less  
17 disturbance. So in doing that, we looked at a couple of  
18 different options, one that we refer to as the APS/Kellis  
19 Link. And it's kind of hard to see on the map, but  
20 there's a light green line on the very right-hand side of  
21 the screen that took a more southerly direct approach from  
22 the capacitor bank station following the existing Bruce  
23 Mine Road.

24           The issue that finally eliminated that from our  
25 discussion was when we talked to Mr. Kellis, he really

1 doesn't like that route very well. He uses the Bruce Mine  
2 Road to exit his property, and putting a line in that  
3 location would have made it very visual for him as he's  
4 going in and out of his property. The existing proposed  
5 route was actually able to take advantage of putting the  
6 line in a valley between two fairly significant mountains,  
7 but it did have some existing roads in there, and you'll  
8 see that later on on our virtual tour. So that's why that  
9 particular alignment was eliminated.

10           The last link that we will talk about is the FMI/  
11 BLM Alternate Link. And this is where when we had a  
12 number of meetings with FMI, when we talked about bringing  
13 the line over a small portion of it down into the Arizona  
14 State Trust Lands, they're the first ones that said, hey,  
15 stop. Let's talk about this for a minute. Why do we  
16 really need to bring another, you know, regulating agency  
17 into the mix here? Can't we keep the line farther to the  
18 north totally on BLM land and eliminate the need to go to  
19 the State Land Department?

20           So we struggled with that, and we had many field  
21 trips out there to take a look at that. But at the end of  
22 the day, what we decided was, was that we believed that we  
23 could convince the State Land Department that this had  
24 merit to it. It made sense. There's already an existing  
25 road there that the line would parallel that already has a

1 right-of-way from the State Land Department, so we would  
2 be paralleling that line, generally speaking.

3           It eliminated the need to go through the large  
4 boulder field that we're going to see a while later in our  
5 virtual tour. And I'm talking boulders the size of houses  
6 out there. It would have been nearly impossible to build  
7 a road through there. And we believe it would have cost  
8 in the neighborhood of 500,000 to a million dollars more  
9 to keep the line off of state land. So we made the choice  
10 to go ahead and do the state land portion, and so that  
11 particular link was eliminated.

12           So anyway, in summary, what I would like to say  
13 is after all of the things considered -- and we did  
14 consider a number of things. We were out there many days  
15 with our engineering people and with FMI -- we believe  
16 that the current route does a number of things.

17           Obviously, it meets the need for our project. It  
18 moved the line a fair distance away from the proposed mine  
19 expansion. They should be able to operate their mine for  
20 many years to come without worrying about the location of  
21 the line. It avoided private property not owned by FMI,  
22 namely, some of the Kellis holdings in green on the map.  
23 It placed the line in a less visual area and away from  
24 mountain tops in some of the other routes that we  
25 considered.

1           It allowed us to utilize to, I think, the  
2 greatest extent possible existing roads, and, therefore,  
3 creates a lot less ground disturbance. And that was one  
4 of the main issues that the BLM had with regard to the  
5 project. In the western part of the project, we actually  
6 paralleled an existing line, so there's an existing line  
7 that already creates a linear feature in the landscape  
8 that we were able to parallel.

9           I think I already mentioned this, but it required  
10 much less road building than some of the other routes and  
11 was much less costly than some of the other routes that  
12 would have necessitated large amounts of road building.

13           So those were the routes that we considered, and  
14 that's how the route that is before you today evolved to  
15 the point where we are.

16           CHMN. FOREMAN: Let me interrupt and ask just a  
17 brief clarifying question. The green Kellis land, is it  
18 all fee on the map, or are those grazing leases?

19           THE WITNESS: The green on the map are patented  
20 mining claims. And for those of you that may not know  
21 what that term means, the BLM is -- actually, those were  
22 BLM lands before. They have actually deeded that land to  
23 Mr. Kellis. He actually owns that land, so it's fee-owned  
24 land. He does have, by the way, a number of leases in the  
25 area on state land for grazing and such, but those lands

1 are private lands that he owns.

2 CHMN. FOREMAN: Thank you.

3 Q. (BY MR. ACKEN) Mr. Herndon, would you summarize  
4 the proposed route and status of the NEPA process.

5 A. I think I have already mentioned it, but I'll  
6 mention it again because I think it is important. About  
7 75 percent of the project falls on either BLM or State  
8 Trust Lands. The remainder of the project falls on land  
9 that is owned by FMI. We've avoided Mr. Kellis' lands  
10 wholly, and he was appreciative of that, and I think that  
11 was one of the reasons why he supports this project.

12 As I mentioned before, we've been working with  
13 the BLM for about a year on this project. We're in the  
14 very final stages of acquiring a finding of no significant  
15 impact from the BLM. We believe that will happen probably  
16 in the next month or two. And about the same time, we  
17 expect a right-of-way grant from the BLM.

18 That was actually able -- we were able to do that  
19 because we have done a great deal of engineering on this  
20 particular project up front, because FMI paid us to do  
21 that. Many times what will happen is we'll actually  
22 acquire a finding of no significant impact from the BLM,  
23 but the detailed work is done at a later date and the  
24 right-of-way is actually done at a later date on the  
25 federal side of things. In this particular instance, we

1 believe that those will be done about the same time.

2 Q. Have you received any recent correspondence from  
3 the BLM?

4 A. Yes, we have. And the letter that we received is  
5 shown on the right screen, dated May 12. And again, I  
6 think the important part of this letter talks about, at  
7 the very end, where it says that through the NEPA process  
8 thus far -- which has been about a year. I believe we  
9 filed the application on May 6, 2008 -- has found no  
10 significant impacts or issues to date.

11 Q. And a copy of that letter has been marked for  
12 identification as APS-5, correct?

13 A. That's correct.

14 Q. Describe the transmission structures that will be  
15 used for this project.

16 A. I will be referring to the graphic on the right  
17 screen, which is in Exhibit G in the application. There  
18 are really two types of structures that we plan to use on  
19 this particular project. And by the way, they are all  
20 steel structures. The structures that are out there  
21 today, the existing line is wood. And the existing line  
22 is actually built on the two-pole or what we refer to as  
23 H-frame structures is what the existing line was built on.

24 But we plan to use both types of structures.

25 We're going to use steel monopoles, which is the one to

1 the left on the graphic here, which puts the conductors in  
2 a vertical configuration. The H-frame structures will be  
3 used in some locations. These are used when you have  
4 terrain features sometimes that you want to have a  
5 vertical, or should I say a horizontal configuration for  
6 your conductors. So that type of structure would be used.

7           The one point that I did make earlier in kind of  
8 my opening was that the typical structure height here is  
9 about 74 feet versus you have heard us talk 500kV lines in  
10 the 150, -60, -70 feet range sometimes. So a much shorter  
11 structure with the lower voltage.

12           The typical span lengths for this project will be  
13 in the 800 to 1,500 feet range. When I say span, what I'm  
14 talking about is the distance between one structure to the  
15 next on a tangent line or a straight line. And there are  
16 some special structures that are shown at the bottom of  
17 the graphic, and these are used to turn the facility  
18 whenever you have to turn the line. We'll be using  
19 three-pole turning structures, that's this figure on the  
20 left, or in some instances two-pole structures with two  
21 conductors on one pole and one conductor on the other.

22           The significant thing that I want to mention with  
23 regard to these turning structures is they're all  
24 self-supporting steel; therefore, they don't require a  
25 down guy. You have probably seen, even driving in the

1 town here in Phoenix and other areas with overhead lines,  
2 sometimes you'll see where a line turns or it stops there  
3 will be a wire that comes off of the top of the pole that  
4 goes into the ground. That's referred to as a down guy.  
5 None of those will be required on this facility, and,  
6 again, that lessens the amount of ground disturbance in  
7 the environment.

8 Q. Next --

9 A. One last point that I would like to make, excuse  
10 me, Bert. But I wanted to mention that these are all  
11 self-weathering steel poles, so they'll have that rusty  
12 look to them, which we believe fits into the environment  
13 well in this particular setting.

14 Q. Next, describe the corridor and requested  
15 right-of-way.

16 A. As I mentioned, again, one of the unique features  
17 about this project is the fact that we're only asking for  
18 a 200-foot wide corridor. The map that we're looking at  
19 on the right screen, which can be found on the back of  
20 your placemat and it's also in the supplemental packet,  
21 was a map that was actually used for the public notice for  
22 this project. It still shows the different land  
23 jurisdictions. It just shows them basically in a  
24 black-and-white way as opposed to a colored way, because  
25 our advertisements in the newspapers are black and white.

1 But again, because we were able to do a  
2 significant amount of the engineering up front and  
3 determine a centerline for the project, we believe that we  
4 will be able to operate within a 200-foot wide corridor.  
5 That it will allow a little bit of flexibility with the  
6 final engineering of the project in case we need to move  
7 it a little bit. But again, the requested right-of-way is  
8 100-feet wide based on the centerline of the alignment.

9 Q. What is the schedule for construction and  
10 operation of this project?

11 A. When we first began working with the mine  
12 operator in late 2007, as you probably all can appreciate,  
13 the economy was in a little bit different shape back then  
14 than it is today. In fact, they were very -- they were  
15 wanting us to get this line moved very quickly, if we  
16 could. And, in fact, originally the in-service date for  
17 this project was middle of 2010. That has now changed to  
18 the first quarter of 2014.

19 I want to dwell on that for just a minute,  
20 because we talked a little bit about and Mr. Dietrich  
21 talked a little bit about the sequencing of applying for  
22 applications on these types of projects. Typically it  
23 takes sometimes between 12 to 14 to 18 months, in some  
24 instances, to acquire a state land permit. And if you  
25 start considering that this project was being envisioned

1 to need to be built in the first -- or the middle of 2010,  
2 had we waited until today, for example, to get a CEC and  
3 then gone through a period to acquire the state land, we  
4 would not have met our in-service date. So that was a  
5 compelling factor that we felt that we needed to file the  
6 state land permit earlier on this project than we may need  
7 to on some other projects.

8 And believe me, we fully plan to work with the  
9 State Land Department. We hear their issues, we  
10 understand them, and we're going to do everything we can  
11 in the future to accommodate their needs and try to work  
12 more closely with them up front on some of these projects.

13 But again, originally a 2010 in-service date, now  
14 versus a 2014 in-service date. And that could actually  
15 change if the economy were to get better. A lot of the  
16 timing of this is actually predicated on worldwide copper  
17 demand. And so if copper demand goes up significantly, we  
18 could actually be looking at building this before the  
19 first quarter of 2012. But today it's a -- or 2014,  
20 excuse me. Today it's a 2014 in-service date. And we  
21 would, therefore, with that current date in mind, we would  
22 plan on beginning construction in the 2013 time frame to  
23 meet that 2014 in-service date.

24 CHMN. FOREMAN: I think we have a question.  
25 Member Eberhart.

1 MEMBER EBERHART: Thank you.

2 Mr. Herndon, is that date in the CEC, or is there  
3 a proposed construction date and in-service date mentioned  
4 in the actual CEC? Do you know? I seem to recall the  
5 2010 date was actually in there.

6 MR. ACKEN: Member Eberhart, if I might, the  
7 in-service -- I think it was the in-service date in the  
8 application referenced 2010, and so Mr. Herndon is  
9 correcting that portion of the application.

10 MEMBER EBERHART: Okay. Also, there was  
11 mentioned, I think in the CEC, a seven-year span. Are you  
12 anticipating changing that?

13 MR. ACKEN: APS is requesting a seven-year term  
14 for the CEC for the reasons that Mr. Herndon just noted.  
15 Originally, we were thinking perhaps a five-year term, but  
16 given the push in the in-service date and the somewhat  
17 uncertainty of it, that's why you see the seven-year  
18 request for the term.

19 MEMBER EBERHART: Will that seven years, being  
20 it's 2009 and it's only five years, will seven years be  
21 enough if the economy doesn't improve for two or three  
22 more years?

23 MR. ACKEN: Well, certainly APS -- what APS tried  
24 to do is come to the committee with what we thought was a  
25 reasoned, kind of middle ground, if you will, without

1 pushing it out too far, but trying to give ourselves some  
2 flexibility. If the committee decides that you guys are  
3 cutting it a little close, more time is needed, obviously,  
4 that's something that we would consider. But we were just  
5 trying to do the best we could to make it a reasonable  
6 time frame.

7 MEMBER EBERHART: Thank you.

8 CHMN. FOREMAN: Member Mundell.

9 MEMBER MUNDELL: Thank you, Mr. Chairman. Just a  
10 follow-up on that.

11 In the past, usually time frames have been put in  
12 CECs because of the concern about population growth and  
13 not having an open-ended CEC where population growth could  
14 occur. I mean, you're not envisioning if it was seven  
15 years, ten years, you don't envision some problem  
16 occurring out there, do you, with population growth?

17 MR. ACKEN: Member Mundell, we certainly do not.  
18 And, in fact, Mr. Duncan will testify as to future land  
19 use expectations for this area, and I think you're spot on  
20 with your assessment.

21 MEMBER MUNDELL: Well, that's always good to  
22 know. Thank you.

23 CHMN. FOREMAN: Member Palmer.

24 MEMBER PALMER: Mr. Chairman.

25 Mr. Herndon, this 5.3-mile proposed route will

1 likely contain about 30 structures, either monopole or  
2 H-frame?

3 THE WITNESS: That's probably pretty close to  
4 being correct.

5 MEMBER PALMER: And what is the average footprint  
6 of a monopole and the average footprint of an H-frame  
7 structure?

8 THE WITNESS: The base of the structures that  
9 we're talking about here today are probably in the  
10 two-and-a-half to three-foot diameter, something like  
11 that. I believe that Mr. Duncan -- we've actually used an  
12 average with regard to disturbance around poles that was  
13 used in our analysis with the federal process and the BLM,  
14 and he probably has a better handle on that than I do.  
15 But we'll let him look that up, and then he can help  
16 answer that a little bit later in his presentation.

17 MEMBER PALMER: Because there's a humorous  
18 paradox that looms before us that I'll discuss later. But  
19 thank you.

20 MEMBER MUNDELL: Can't wait. Couldn't you do it  
21 now?

22 CHMN. FOREMAN: All right. Very good. Please  
23 proceed.

24 MR. ACKEN: Thank you for the suspense.

25 Q. (BY MR. ACKEN) Mr. Herndon, anything else with

1 respect to the schedule that you wanted to discuss?

2 A. No.

3 Q. Some members of the committee have asked some  
4 questions about the project costs. Please take a moment  
5 and describe the costs associated with this project.

6 A. The total cost of the project is approximately  
7 \$8.1 million. And the way that breaks down is about  
8 \$8 million for material and construction engineering, and  
9 about \$120,000 for right-of-way costs. And again,  
10 pointing out that it is customer funded. So as one of the  
11 committee members pointed out earlier, will not have any  
12 effect on APS ratepayers.

13 Q. Thank you. We're going to turn to the last  
14 portion of Mr. Herndon's testimony, the public process.

15 Mr. Herndon, would you describe the process that  
16 you conducted for this project.

17 A. I will. Like I say, when we first started  
18 looking at how we were going to get from Point A to  
19 Point B, it was pretty obvious to us that we were going to  
20 have to cross federal BLM lands. Quite frankly, I had  
21 never dealt with the Kingman Field Office of the BLM  
22 before. So in late 2007, I made a call up there and  
23 introduced myself to those folks and started a dialogue  
24 with them with regard to this project. And, obviously,  
25 because the mine operation falls in their area of

1 jurisdiction, they were very familiar with the mine and  
2 what it does and its operation.

3 But we filed an application with the BLM on  
4 May 6, 2008, which actually triggered the NEPA process.  
5 And so we started doing a whole bunch of things with  
6 regard to environmental studies, and Kevin is going to  
7 talk about them in more detail shortly. But that started  
8 our federal process that we're getting ready to complete  
9 here hopefully in the next month or two. So it will have  
10 been about a 14-month process with the BLM.

11 If I could have the right screen, we had a number  
12 of jurisdictional meetings, what we refer to as  
13 jurisdictional meetings. I do want to point out that the  
14 graphic on the right-hand screen can be found in your  
15 supplemental packet. There is a graphic like this in the  
16 application. The one in the application is different than  
17 this one. It actually left out some of the meetings. And  
18 we felt that they were important, so we added them on.  
19 And so this is an amendment to the graphic shown in the  
20 CEC application. But again, this points out some of the  
21 important meetings that we had.

22 And believe me, there were a number of phone  
23 calls and a number of conference calls and things  
24 throughout the process and the project that aren't shown  
25 on this, but these are some of the more important

1 meetings. It shows the date we met with the BLM and filed  
2 our application. We had numerous field trips with the  
3 BLM.

4 I can tell you a little story about the field  
5 trip where we got out there in the farthest remote area  
6 that you can imagine, about this time of year, and had a  
7 flat tire and no cell phone service. It was a bit nerve  
8 wracking for a little while. But anyway, we got the tire  
9 fixed and got out of there. But we had a number of field  
10 trips out of there.

11 We had a number of different interactions with  
12 the Arizona State Land Department. Actually met with the  
13 State Land Department on November 7, where we discussed  
14 the options that we had looked at off of state land and  
15 indicated why we thought we needed to slightly encroach on  
16 state land. And so we had that discussion with them. And  
17 so, quite frankly, I was a little surprised when we  
18 received the recent letter that said that they had some  
19 issues.

20 But anyway, we met with the Corporation  
21 Commission on December 11 and gave them a status -- it was  
22 the Staff of the Corporation Commission -- gave them a  
23 status of the project.

24 Gave a formal presentation before the Yavapai  
25 County Board of Supervisors on November 17, and

1 subsequently received a letter of support from them that  
2 is in your supplemental packet as well.

3 Met with Mr. Ed Kellis face to face at his ranch  
4 on May 1, 2008, introduced him to the project, and  
5 basically he gave us an understanding of what he hoped to  
6 see with regard to alignments for the project, and we  
7 believe we've been able to meet and achieve those.

8 If we could have the next slide.

9 Q. Before you move forward, Mr. Herndon, the table  
10 that you were showing, you have a replacement page for the  
11 application marked as APS-6; is that correct?

12 A. That's right.

13 Q. And the letter that you referenced from Yavapai  
14 County has been marked for identification as APS-7?

15 A. Correct.

16 Q. Please continue.

17 A. Early on in about September of 2008, we produced  
18 a fact sheet or newsletter for the project that gave the  
19 details of what we were trying to accomplish with the  
20 project. And working with the BLM, this newsletter was  
21 sent out to a number of individuals or stakeholders in the  
22 area that might have interest in the project. Along with  
23 that, we prepared a written notice shown on the next  
24 slide. This is actually a copy of what we refer to as a  
25 federal NEPA scoping letter that was sent out along with

1 the newsletter to a number of individual letting them know  
2 that there was a federal process going on with regard to  
3 the project and gave them opportunities to interact with  
4 our project team if they felt they needed to do that.

5 We didn't have much response. There were a  
6 couple of letters, I believe, that we received from Native  
7 American tribes, and that is what the BLM is currently  
8 working with to kind of wrap up the final portions of  
9 Native American consultation with the tribes.

10 The next graphic shows an Exhibit H letter that  
11 was sent out to the agencies in the area. Although we had  
12 worked with most of them throughout the process, the state  
13 requires us to send this letter out. It's kind of during  
14 the time that we're preparing the CEC application to see  
15 if there's been any new plans developed or their plans  
16 have changed. So this went out to a number of agencies,  
17 and entities around the mid- to late March time frame of  
18 2009.

19 Q. And the list of parties who received the letter,  
20 as well as responses, can be found in APS-8; is that  
21 correct?

22 A. That's right.

23 Q. Okay. Please continue.

24 A. We placed a notice of hearing in The Arizona  
25 Republic newspaper its general circulation, that was

1 placed on April 4, 2009, as well as the same notice was  
2 placed in the Prescott Courier newspaper, which is the  
3 area or the newspaper that serves the area of Bagdad. We  
4 placed that on April 5, 2009.

5 And additional to that, we actually sent a copy  
6 of the meeting notice to all of the registered mail  
7 recipients in the Bagdad area. I believe it was about  
8 1,000, or something like that, that we sent to. So  
9 everybody that lived in Bagdad or had a post office box in  
10 Bagdad got a copy of the notice.

11 As requested by Chair Foreman in one of our  
12 procedural meetings, we also sent the notice to the BLM,  
13 the Arizona State Land Department, the Arizona Game & Fish  
14 department, to FMI, and to Mr. Ed Kellis. And again, this  
15 can be found in your supplemental packet.

16 Q. Did you post any signs letting the public know  
17 about this hearing?

18 A. We did. Actually, the project area is very  
19 difficult to get to. But there is one road that leads  
20 into the project area, and so we placed a sign right at  
21 the entrance of that road. A copy of the sign or picture  
22 of the sign is shown on the right-hand screen indicating  
23 the time and place and date for this particular hearing.  
24 So there was one sign placed out there, and a copy of that  
25 picture can also be found in your supplemental packet.

1 Q. Mr. Herndon, do you have any concluding remarks  
2 for the committee?

3 A. I do. Like I said earlier, I have worked on a  
4 lot of transmission projects and managed a lot of  
5 transmission projects in my days at APS. I'm getting to  
6 the point where I don't know how many more I'm going to  
7 do. I hope I get to retire one of these days before too  
8 long.

9 But I think the important thing that I want to  
10 let you know here is really all of the projects that I  
11 have ever worked on, this is really probably the most  
12 environmentally compatible, in my opinion, because of the  
13 area and -- the area that it's in, the dynamics of the  
14 project, and it's just out of the way, basically. So it  
15 will obviously allow for the mine to continue to expand  
16 and operate, and that's an important factor.

17 I believe that we've garnered a lot of public  
18 support for this project as we moved along. Quite  
19 frankly, there weren't that many stakeholders involved,  
20 but the ones that were involved primarily have been in  
21 support of the project.

22 Mr. Duncan with his presentation here shortly is  
23 going to show you the kind of intensive environmental work  
24 that's been done on this project to prove its  
25 environmental compatibility.

1           And lastly, APS requests that the committee grant  
2 APS a CEC to construct this project.

3 MR. ACKEN: Thank you. Mr. Herndon is available  
4 for questions.

5 CHMN. FOREMAN: Okay. Member Mundell.

6 MEMBER MUNDELL: Thank you Mr. Chairman.

7

## 8 EXAMINATION

9

10 Q. (BY COM. MUNDELL) In the letter that you put on  
11 the screen, you were going to meet with the tribe on  
12 May 12, and could you elaborate on that?

13       A.     Yeah.  Actually, the letter was dated May 12.  
14     The meeting with the tribe happened the 14th.  Mr. Duncan  
15     was actually at this meeting and can speak specifically to  
16     what occurred there.  So I believe he's probably the  
17     better person to talk about that particular field trip.

18 CHMN. FOREMAN: You're referring to APS-5; is  
19 that correct?

20 MR. ACKEN: Yes.

21 CHMN. FOREMAN: I want to make sure we have got  
22 the right letter. I'm sorry. Please proceed.

23 MEMBER MUNDELL: No. Thank you, Mr. Chairman. I  
24 appreciate the clarification.

25 Q. (BY MEMBER MUNDELL) The letter is dated May 12,

1 2009 and it talks about a field trip. I just thought that  
2 you were -- because you were talking about public  
3 participation, but that's fine if you want to defer to  
4 Mr. Duncan. That's fine.

5 And then what was the term that you used? Down  
6 boy? What was the wire? Down guy?

7 A. Down guy.

8 Q. Down guy. And you said that you -- you said they  
9 weren't needed, and maybe I didn't hear it. Did you say  
10 why they weren't needed?

11 A. Yeah. Because the steel poles that we're placing  
12 out there are self-supporting steel poles. So they're a  
13 little beefier pole than otherwise would be required to  
14 eliminate the need for a down guy to hold the tension on  
15 the structures.

16 Q. And those poles are not -- are they utilized in  
17 other areas that -- I guess what my question is, is that  
18 you said that they're self-supporting, so they're  
19 stronger. And I was just trying to understand why, then,  
20 in other locations you don't use them?

21 A. Actually, we do use them in other locations.  
22 It's beginning to be a more commonly used structure. Back  
23 in the old days, for example, before steel poles really  
24 came into play, great big, hefty, really strong wood poles  
25 were real hard to find that would hold an angle for a line

1 where you didn't have to down guy it. So almost all of  
2 your old lines that you will see all have down guys on  
3 them.

4 Q. Thank you for that clarification. I guess I  
5 misunderstood. I thought that you were making it sound  
6 like this was unique that you didn't need to use them, but  
7 that's the trend that is generically going to be utilized  
8 going forward in all areas and not just in this area?

9 A. Well, it will be utilized more and more. Because  
10 the way the poles are constructed now, you have that  
11 potential to be able to use a self-supporting steel pole.  
12 They are a little more costly. But I think the  
13 significance in this area was because the BLM was real  
14 interested in how much land disturbance there was going to  
15 be, we chose to use self-supporting steel poles to  
16 eliminate the additional ground disturbance there. And,  
17 quite frankly, there's a number of angle structures on  
18 this line, so it would have been a fairly increased amount  
19 of disturbance had we used the down-guyed poles.

20 MEMBER MUNDELL: Thank you.

21 Thank you, Mr. Chairman.

22 CHMN. FOREMAN: Other questions?

23 Member Eberhart.

24 MEMBER EBERHART: Thank you. Just one question.

25

1

## EXAMINATION

2

3 Q. (BY MEMBER EBERHART) Do you know how many poles  
4 are going to be located on state trust land?

5 A. Yes, there's two.

6 Q. MEMBER EBERHART: Thank you.

7 CHMN. FOREMAN: Member Youle.

8

9

## EXAMINATION

10

11 Q. (BY MEMBER YOULE) Quick question. I notice in  
12 the State Land Department memorandum they referred to a  
13 double circuit 115kV, but that's not accurate, is it?  
14 That is Exhibit 10. Aren't you going for a single  
15 circuit?

16 CHMN. FOREMAN: And you're referring to  
17 Exhibit --

18 MEMBER YOULE: 10.

19 CHMN. FOREMAN: APS-10.

20 MEMBER YOULE: Uh-huh. Right-of-way information.

21 THE WITNESS: You're correct. It is a single  
22 circuit line, so that would be in error.

23 MEMBER YOULE: Okay. Thank you.

24 CHMN. FOREMAN: Member Eberhart.

25 MEMBER EBERHART: Thank you. That jogged my

1 memory. I did have one more question.

2

3

FURTHER EXAMINATION

4

5 Q. (BY MEMBER EBERHART) On the portion that is  
6 parallel to an existing line, is there an opportunity for  
7 underbuild to place that existing line on these poles, or  
8 is that not appropriate or possible?

9 A. The issue there is if that was an existing --  
10 it's a distribution line. It's a 12kV line. There's a  
11 couple of problems with that that I see, in my opinion.  
12 One is that line is not owned by APS. It's actually owned  
13 by FMI. So, you know, that would partially be up to them.

14 The other -- probably the bigger issue is, is  
15 it's fairly easy to underbuild on 69kV facilities, but  
16 when you're talking about, like I mentioned before, 800 to  
17 1,500-foot spans here, underbuilding really would be  
18 problematic in this particular instance.

19 MEMBER EBERHART: Thank you.

20

21

EXAMINATION

22

23 Q. (BY CHMN. FOREMAN) Let me ask a question with  
24 regard to APS-8. That's the letter from Mr. Kellis. In  
25 the second paragraph of that letter, there is a reference

1 to crossing fence lines and installing gates and  
2 cattleguards. Can you tell me whether the -- and it  
3 doesn't make reference to which alternative route he has  
4 in mind.

5 In the proposed route, will there be any fence  
6 lines that are crossed, and will there be any need for  
7 gates and cattleguard?

8 A. Yes, there will be some instances where we will  
9 cross fences. I believe most of those already have gates  
10 and cattleguards associated with them, but we're fine with  
11 this condition. If we have to go through -- breach a  
12 fence that didn't have a gate in it, we would be happy to  
13 comply with this condition to accommodate Mr. Kellis.

14 Q. All right. And I just wanted to check on that,  
15 if there were places that were -- if there were fences  
16 that were crossed by either access roads -- I assume it  
17 would be entirely by access roads, then you would not have  
18 a problem with a condition that would stipulate the  
19 placement of gates, an appropriate gate and cattleguard?

20 A. We would not have a problem with that.

21 CHMN. FOREMAN: Very good. All right. Would it  
22 be convenient to take a break right now?

23 MR. ACKEN: Yes.

24 CHMN. FOREMAN: Let's take about a 15-minute  
25 break. We'll start again at 11:15.

1 (A recess was taken from 10:58 a.m. to 11:15 a.m.)

2 CHMN. FOREMAN: Let's go back on the record now.

3 Counsel, are you ready?

4 MR. ACKEN: Chairman, yes, we are.

5 CHMN. FOREMAN: You may proceed.

6 MR. ACKEN: APS calls Kevin Duncan.

7 CHMN. FOREMAN: All right. Mr. Duncan, do you  
8 wish an oath or affirmation?

9 MR. DUNCAN: Oath is fine.

10 CHMN. FOREMAN: Raise your right hand, please.

11 (MR. DUNCAN WAS DULY SWORN.)

12 CHMN. FOREMAN: Please give us your full name,  
13 and spell your last name for the court reporter.

14 THE WITNESS: My name is Kevin Duncan,  
15 D-U-N-C-A-N.

16 CHMN. FOREMAN: Counsel, you may proceed.

17 MR. ACKEN: Thank you.

18

19 KEVIN DUNCAN,  
20 called as a witness on behalf of the Applicant, having  
21 been first duly sworn by the Chairman to speak the truth  
22 and nothing but the truth, was examined and testified as  
23 follows:

24

25

## 1 DIRECT EXAMINATION

2

3 Q. (BY MR. ACKEN) Mr. Duncan, please provide the  
4 committee with an overview of your educational background  
5 and work experience.

6 A. Certainly. I earned my bachelor of science in  
7 urban planning at the University of Utah. I currently  
8 serve as a project manager and senior environmental  
9 planner at the Environmental Planning Group, or EPG.

10 I have approximately seven years of experience as  
11 an environmental planner. I have managed or participated  
12 in 15 major transmission line projects. I'm a certified  
13 member of the American Institute of Certified Planners,  
14 and I currently serve as a board member of the Arizona  
15 Planning Association.

16 Q. What has been your role in this project?

17 A. I served as the project manager for the  
18 environmental study supporting the NEPA process and the  
19 state siting process.

20 Q. Please provide an overview of your testimony here  
21 today.

22 A. Okay. I will provide an overview of the  
23 environmental studies, I will conduct a virtual tour of  
24 the proposed route, and I'll provide my professional  
25 opinion of the environmental compatibility of the project.

1 Q. Let's start with the environmental studies.  
2 Describe the studies that you conducted for the project.

3 A. Certainly. Because the project crosses federal  
4 land, a NEPA process is required. NEPA compliance is  
5 required prior to the granting of federal rights-of-way.  
6 The BLM Kingman Field Office served as the lead federal  
7 agency for this project.

8 And in consultation with the Kingman Field  
9 Office, it was determined that an environmental assessment  
10 was the appropriate level for this project, and an  
11 environmental assessment was prepared. To support the  
12 environmental assessment, a scoping report, cultural  
13 resources report, and biological resources report were  
14 prepared, all of which can be found in Exhibit B-1 of the  
15 application.

16 Q. What were the findings in the environmental  
17 assessment?

18 A. All of the studies, environmental studies that  
19 were done, concluded that the project has no significant  
20 impacts. In fact, minimal impacts to each of the  
21 resources. The project was found to be in conformance  
22 with the Kingman Field Office resource management plan.

23 Q. And what is the current status of the BLM review?

24 A. All of the studies supporting the EA have been  
25 completed. Section 106 consultation involving the Native

1 American tribes is ongoing. That is a process that is  
2 conducted by the BLM, and that process at this time is  
3 ongoing. However, as per the letter received from the  
4 BLM, that is the final remaining component of the NEPA  
5 process, and a finding of no significant impact and record  
6 decision are expected.

7 Q. Did you oversee preparation of the CEC  
8 application, which has been marked for identification as  
9 APS-1?

10 A. Yes, I did.

11 Q. With the new in-service date as testified by  
12 Mr. Herndon and the replacement Table J-1 concerning  
13 stakeholder meetings, is the application true and  
14 complete?

15 A. Yes, it is.

16 Q. Describe the studies that you conducted as part  
17 of the CEC application.

18 A. To be in compliance with the state siting  
19 process, a Certificate of Environmental Compatibility  
20 application was prepared. To support that application,  
21 the following resources are discussed: Land use and  
22 recreation, which can be found in Exhibits A, B, F, and H;  
23 biological resources, which can be found in Exhibits B, C,  
24 and D; cultural resources, which can be found in Exhibits  
25 B and E; and visual resources, also found in Exhibits B

1 and E.

2 Q. How did you analyze the project's effect on land  
3 use and recreation?

4 A. Agency plans, including the BLM Kingman Field  
5 Office resource management plan, as well as the Yavapai  
6 County general plan, were reviewed for existing and future  
7 land uses. Existing land uses were also verified in  
8 person using the 2-mile buffer from the existing and  
9 proposed route.

10 The project is primarily located on BLM land.  
11 There is existing access for much of the proposed route,  
12 as we will see in the virtual tour.

13 The primary land uses in the study area include  
14 the Bagdad Copper Mine and the Town of Bagdad, which, as  
15 mentioned earlier, is a company-owned town.

16 There are no planned developments in the study  
17 area other than the approved Bagdad Copper Mine expansion.

18 Q. To a question raised by Mr. Mundell, there are no  
19 planned housing developments in this area?

20 A. There are no planned housing developments in this  
21 study area.

22 Q. What were your conclusions with respect to land  
23 use impacts?

24 A. We expect that the project will have minimal  
25 impacts to land uses. As described by Mr. Herndon, Kellis

1 Ranch is near the project, approximately a half a mile  
2 away from the proposed route, but none of his land will be  
3 crossed by the proposed route and the owner supports the  
4 project.

5           There are minimal impacts expected for dispersed  
6 recreation and grazing. The project conforms with the  
7 Bureau of Land Management resource management plan, and no  
8 adverse impacts are expected on planned uses based on  
9 coordination with jurisdiction and local land owners.

10       Q. Do the BLM and Yavapai County agree with your  
11 conclusions concerning land use impacts?

12       A. Yes. As stated, the letter that we received from  
13 the BLM speaks to the fact that a finding of no  
14 significant impact is expected. And as included in your  
15 supplemental packet, we have a letter from the Board of  
16 Supervisors for Yavapai County unanimously supporting the  
17 project.

18       Q. Next describe your evaluation process for  
19 biological resources.

20       A. I would like to speak first to this photo shown  
21 here on the right screen. We included this just to kind  
22 of give you a general characterization of some of the  
23 vegetation that is within the study area. And here in the  
24 background of this photo you see some of the waste rock  
25 areas as described by Mr. Herndon, literally mountains of

1 rock. But I wanted to show this photo to kind of show the  
2 topography and typical vegetation in the study area.

3 Now, as far as the assessment, EPG biologists  
4 conducted a biological assessment, which included field  
5 inventory and review, as well as a native plant survey on  
6 the Arizona State Trust land.

7 Contacts were made with the Bureau of Land  
8 Management, the Arizona Game & Fish Department, and the  
9 United States Fish & Wildlife Service. No threatened or  
10 endangered species habitat exists in the study area, and  
11 no adverse impacts are expected. We conclude that there  
12 will be minimal impacts to biological resources.

13 Q. Describe your evaluation of cultural resources.

14 A. A detailed cultural resource study, including a  
15 Class One records review and a Class Three intensive  
16 pedestrian survey of the 100 foot right-of-way and access  
17 roads was conducted.

18 As mentioned by Committee Member Mundell,  
19 informal Native American consultation is ongoing, and a  
20 site visit was made on May 14, last week, and I did attend  
21 that meeting. The tribes did -- or I should say the tribe  
22 did bring additional information to that meeting, and the  
23 Bureau of Land Management is currently reviewing that as  
24 part of the consultation.

25 CHMN. FOREMAN: Let me stop you there. We have a

1 question.

2 Member Mundell.

3 MEMBER MUNDELL: Thank you, Mr. Chairman. I  
4 thought it would be appropriate at this time to ask the  
5 question, then.

6 They brought additional issues, concerns. How  
7 would you describe it? What was brought to your  
8 attention?

9 THE WITNESS: One of the -- I would say that  
10 it -- I guess you could say it would be concerns, but one  
11 of the items that was brought forward was a potential site  
12 within the project area. No specific information was  
13 provided on the location of that site. And currently the  
14 BLM is, as I say, reviewing that information and it's  
15 consulting with the tribe. And I would expect if the BLM  
16 expects us to respond to that, they will provide that  
17 information to us.

18 We believe that -- it is our opinion that any  
19 information that's brought forward can be mitigated  
20 through mitigation efforts such as structure placement or  
21 avoidance.

22 MEMBER MUNDELL: I guess so I'm clearer, we're  
23 sort of -- it's like Kabuki theater here.

24 Is it a historical site that they're concerned  
25 about? Does it have some significance to the tribe that

1 they want you to mitigate? I mean, could you elaborate a  
2 little bit?

3 THE WITNESS: Certainly. They did mention that  
4 it is a sacred site. And we believe that through  
5 mitigation such as avoidance or structure placement or  
6 cultural monitoring while work is being done in the area  
7 that any concerns could be addressed.

8 MEMBER MUNDELL: And so are you all going to  
9 be -- I'll address it to Counsel. Are you going to be  
10 coming forth with a specific condition to deal with that  
11 issue?

12 THE WITNESS: If the BLM -- the BLM conducts the  
13 consultation. And if they -- if they indicate that this  
14 is an issue that we need to respond to, yes, we will.

15 MEMBER MUNDELL: Well, my question really --  
16 excuse me, Counsel -- my question is I thought one of the  
17 factors that we were to address as a committee is  
18 historical -- you want to call it a sacred area.

19 So whether the BLM does it or not, I'm asking the  
20 Applicant are they going to have some -- suggest some  
21 condition, or have you already in your CEC that you're  
22 proposing?

23 MR. ACKEN: Member Mundell, this came up, as you  
24 know, in a late hour. We do not have a condition specific  
25 to the tribe raising -- the tribe's concern.

1           What I will point out is that because it's on BLM  
2 land, it will be addressed through the BLM process, and we  
3 do have conditions that require us to comply with the BLM  
4 requirements. Frankly, until there is more information  
5 about the site, it's going to be difficult to craft a  
6 specific condition, because we just don't know where it  
7 is; we don't know what it is.

8           And so it would be our recommendation that that  
9 be addressed as its continuing to be addressed through the  
10 BLM process. And the CEC before you is broad enough to  
11 capture any requirements through the BLM process.

12           MEMBER MUNDELL: Okay. Well, I appreciate that.  
13 I'll be looking at the verbiage and either agree or  
14 disagree with your analysis. Thank you.

15           CHMN. FOREMAN: How close is the closest Indian  
16 reservation or Indian Native American community located to  
17 the site?

18           THE WITNESS: I don't have those specific  
19 numbers, but my recollection is that it's more than  
20 25 miles away.

21           CHMN. FOREMAN: And am I correct -- well, is  
22 there any Native American community in the Bagdad area?

23           THE WITNESS: Not that I'm aware of.

24           CHMN. FOREMAN: So although they haven't told you  
25 precisely the nature of the site that they have concerns

1 about, do you have any reason to believe that it involves  
2 a burial ground or architectural or paleontological --

3 MEMBER MUNDELL: That's why I didn't say it,  
4 Mr. Chairman.

5 CHMN. FOREMAN: -- remains that might be  
6 addressed by Condition No. 6 in your proposed CEC?

7 THE WITNESS: We don't have enough information to  
8 make that determination at this time.

9 CHMN. FOREMAN: All right. Very good.  
10 Member Eberhart.

11 MEMBER EBERHART: One last question. I know this  
12 was brought up at a late date, but is the site they're  
13 talking about listed in SHPO or any historical records  
14 that are available?

15 THE WITNESS: As I stated earlier, the cultural  
16 survey that was conducted included a Class One record  
17 review, as well as a Class Three intensive pedestrian  
18 survey. No indication was made of this in either of those  
19 surveys.

20 MEMBER EBERHART: And which tribe is it that  
21 raised this concern?

22 THE WITNESS: The Hualapai tribe.

23 MEMBER EBERHART: Thank you.

24 CHMN. FOREMAN: Member Palmer.

25 MEMBER PALMER: Thank you, Mr. Chairman.

1           Mr. Duncan, does the alleged sacred site extend  
2 into the proposed expansion for the mine?

3           THE WITNESS: We don't know where the site is, so  
4 I'm not able to answer that question.

5           MEMBER PALMER: Because we could mitigate impacts  
6 at our level, and the mine could negate that substantially  
7 if the site extends to the proposed mine expansion area.

8           THE WITNESS: An EIA was conducted in the mid-90s  
9 for the mining plan of operation and expansion of the  
10 waste rock areas, and at that time the issue was not  
11 identified.

12          MEMBER PALMER: Thank you.

13          CHMN. FOREMAN: Please proceed.

14          MR. ACKEN: Thank you.

15          Q. (BY MR. ACKEN) Mr. Duncan, why don't you discuss  
16 the one site that was identified as part of your analysis.

17          A. Certainly. One cultural site was identified from  
18 the surveys, the remains of the Copper King mining claim.  
19 This photograph shows one of the features from that site.  
20 The site consists of several collapsed structures, tents,  
21 platforms, prospect pits and trash scatters. This site is  
22 eligible for listing on the National Register of Historic  
23 Places. Our project, through structure placement, will  
24 avoid any disturbance to site features. So it does cross  
25 the site, but avoids site features.

1           The BLM and the Arizona State Land Department  
2 have concluded that the project has minimal impacts to  
3 cultural resources and meets SHPO guidelines.

4       Q.   Turning to the next category, how did you  
5 evaluate the project's effect on visual resources?

6       A.   The BLM visual resource management system was  
7 used as the basis for the analysis. The project is  
8 located within the VRM Class 4 areas, which is the lowest  
9 degree among the four classes used by the system and  
10 allows for maximum modification.

11           The project does comply with VRM Class 4  
12 management guidelines, and a field visit was conducted to  
13 evaluate conditions. The project crosses areas of average  
14 to low scenic quality and is dominated by the Bagdad  
15 Copper Mine as can be seen, again, in this photo with some  
16 of the large waste rock areas.

17           Views from the Town of Bagdad are completely  
18 screened by topography. Views from Kellis Ranch are  
19 partially screened by topography and vegetation. Minimal  
20 visual impacts are anticipated from this project.

21       Q.   Mr. Duncan, did you prepare a virtual tour of the  
22 route?

23       A.   Yes, we did.

24       Q.   And can a copy of that be found marked for  
25 identification as APS-4?

1 A. Yes.

2 Q. What features does the virtual tour cover?

3 A. This image here on the right side is a typical  
4 view that -- or I should say the view that we'll be  
5 starting with during the virtual tour.

6 And some of these features are identical to the  
7 map that we've been using throughout this hearing. This  
8 black line here is the project study area. The red line  
9 is our proposed route. Here is the south waste rock dump  
10 area. The Town of Bagdad is located here. The existing  
11 line to be removed is shown in light brown here. The  
12 FMI-owned mine substation is here at the northern terminus  
13 of the red line, and the APS-owned capacitor bank station  
14 is shown here at the eastern terminus of the proposed  
15 route.

16 The blue points are the points of interest that  
17 we will stop and view photos from during the tour. And as  
18 with our other map, blue indicates Arizona State Trust  
19 land, yellow indicates BLM land, and without color here is  
20 private land.

21 Q. Please present the tour.

22 A. We are going to start on this tour at the FMI  
23 mine substation, and I'll have Dave pause it as soon as we  
24 zoom in on that location so I can describe some -- go  
25 ahead, Dave.

1 (Virtual tour started.)

2 If you pause now, please, Dave. Thank you.

3 I just wanted to point out, in this image here  
4 you see the FMI mine substation at the bottom-middle of  
5 the view here. And these are some of the buildings  
6 associated with the milling operations at the Bagdad  
7 Copper Mine. I wanted to point this out because these are  
8 some of the facilities that receive power from the mine  
9 substation and are the need for the project.

10 Go ahead and proceed, please, Dave.

11 I'm going to proceed to Point of Interest No. 1,  
12 which will be a view looking towards the north towards the  
13 mine substation.

14 Go ahead and pause, please, Dave.

15 This is the mine substation as viewed from this  
16 viewpoint. Again, some of the -- you can see buildings in  
17 this photo here, which are part of the milling facilities  
18 for the mine. The existing line proceeds towards the  
19 southeast from the mine substation. Currently, as you can  
20 see, it's already within some heavily disturbed waste rock  
21 areas. The proposed route in this location will proceed  
22 approximately towards the corner of this view.

23 Go ahead and proceed, please, Dave.

24 We'll now view from the same point looking  
25 towards the east. This is the main pit of the Bagdad

1 operations. The existing line crosses this ridge in this  
2 area. And as you see, there is existing waste rock areas  
3 as well as expansion of the pit, which were all part of  
4 the mine plan of operations, and this makes it clear as to  
5 the reason that this line needs to be relocated out of  
6 this area.

7 Please go ahead and proceed.

8 We're going to continue to the south. Again, in  
9 this location, the proposed route is on FMI private land.  
10 The yellow here indicates BLM land. The proposed route  
11 crosses in this location back onto BLM land. One of the  
12 things that I would like to point out in this area is the  
13 existing access roads that you're going to see throughout  
14 the study area, which will be, as I mentioned earlier,  
15 existing access is there for much of the proposed route.  
16 Spur roads will be necessary to get to the tower sites;  
17 however, the primary access road already exists.

18 The route heads towards the southeast in this  
19 location. We will view from Point of Interest 3 looking  
20 towards the southwest. This view is a typical view of  
21 vegetation and topography in the study area looking along  
22 that 69kV transmission line.

23 This is the 12kV line located here in the  
24 distance up on the ridge. The proposed route would be  
25 crossing this photograph approximately across the middle

1 of this photograph in this area. And there, as you see,  
2 there are existing access roads throughout the study area.

3 Please proceed.

4 We'll continue towards the southeast. The blue  
5 here indicates the Arizona State Trust land. Our next  
6 point of interest will be a view looking towards the south  
7 towards Bruce Mine Road, the road you see here. The  
8 existing boulder field that was mentioned by Mr. Herndon  
9 is located here, and our view will be looking towards the  
10 south towards the State Trust Land across the boulder  
11 field. This is the boulder field that Mr. Herndon was  
12 referring to.

13 There's a truck located right here on Bruce Mine  
14 Road, as well as a person standing here to give a little  
15 bit of scale of some of the size of these boulders. And  
16 this boulder fields extends off of both sides of this  
17 photograph. Where the gentleman is standing is near but  
18 not exactly on where the line would be between the BLM and  
19 State Trust Land. So in order to avoid State Trust Land,  
20 we would have to put the line within this boulder field.

21 Again, this is Bruce Mine Road shown here.

22 Please proceed.

23 We'll continue towards the east. As mentioned by  
24 Mr. Herndon, there are two structures on state land before  
25 the line crosses back onto BLM land. Mr. Kellis's

1 property is located over here on the right side.

2 Our next view will be from a point approximately  
3 where his access road meets Bruce Mine Road. We'll be  
4 looking towards the northwest.

5 This photo, this is Bruce Mine Road here.  
6 Mr. Kellis's house would be about a half mile behind us in  
7 this photo. The proposed route would cross this area  
8 approximately in the middle of this photograph.

9 Please proceed.

10 This is the valley that Mr. Herndon was referring  
11 to that we chose to avoid the impacts that would be  
12 created by being over here for Mr. Kellis. This is the  
13 existing access road that can be used for construction in  
14 this area. This is part of the south waste rock dump area  
15 that you see here with the existing line traversing it,  
16 again showing the need to relocate this line. The Town of  
17 Bagdad is located here at the top.

18 Our final Point of Interest will be a view  
19 looking toward the south towards the APS capacitor bank  
20 station, which you see here in this photograph. The  
21 proposed line will exit this substation, heading towards  
22 the right side of the screen, heading basically directly  
23 towards the west.

24 Go ahead and proceed.

25 That concludes the virtual tour.

1 Q. Thank you, Mr. Duncan. Please summarize your  
2 testimony for the committee.

3 A. I would be happy to.

4 The proposed route is environmentally compatible.  
5 The environmental setting is heavily modified from past  
6 and present mining activities. The project relocates an  
7 existing 115kV transmission line and uses existing access  
8 roads for much of the route.

9 The project will have minimal impacts to existing  
10 and planned land use, visual, cultural and biological  
11 resources. The project conforms with applicable  
12 management plans, including the Bureau of Land Management  
13 resource management plan.

14 Q. And in your opinion, this project is  
15 environmentally compatible?

16 A. Yes, it is.

17 Q. And does that conclude your testimony?

18 A. Yes.

19 MR. ACKEN: Mr. Duncan is available for  
20 questions.

21 CHMN. FOREMAN: Questions from the committee  
22 members?

23 MEMBER YOULE: I have one.

24 CHMN. FOREMAN: Member Youle.

25

## 1 EXAMINATION

2

3 Q. (BY MEMBER YOULE) I'm a little confused on the  
4 biological resources. You have in your -- I guess it's  
5 the biological resources report for the BLM, part of  
6 Exhibit B-1, I guess.

7 You reference habitat for Sonoran Desert  
8 Tortoise, Chuckwalla, Desert Rosy Boa, and Banded Gila  
9 Monster. Are these actually present in the project area,  
10 or is this just potential habitat?

11 A. It is potential habitat.

12 Q. Has anyone done any field studies or actual  
13 observations to see if any of these species are present?

14 A. We had biologists make a site visit to the area,  
15 and none of these species were observed during that site  
16 visit.

17 Q. Okay. I noticed also that Arizona Game & Fish  
18 regulations, there was a reference -- I think it's in the  
19 same exhibit -- to their requirements for relocating  
20 Desert Tortoise should you encounter some. Are you  
21 planning on following those procedures?

22 A. Yes. A biological monitor will be present.

23 Q. That was my other question, will a biological  
24 monitor still be present as stated in here.

25 And then you also had referenced relocating

1 certain plant species in the same exhibit, beavertail  
2 pricklypear, hedgehog cactus, nolina, yuccas, and agaves.  
3 Is that still the plan?

4 A. On BLM land, yes.

5 MEMBER YOULE: Okay. Thank you.

6 CHMN. FOREMAN: Other questions?

7 Member Eberhart.

8

9

EXAMINATION

10

11 Q. (BY MEMBER EBERHART) At the last hearing we had  
12 last week, there was an area that was heavily populated by  
13 saguaros, and I wondered about if you could address  
14 saguaros in this particular case. I think I read there  
15 was only two or something like that in the application.

16 A. There are saguaro species present within the  
17 study area. However, there are none located within our  
18 area of disturbance.

19 MEMBER EBERHART: Thank you.

20 CHMN. FOREMAN: Other questions?

21 Let me bring out for discussion an issue, and  
22 that is the issue of the tour.

23 We have not scheduled -- or I didn't schedule an  
24 onsite tour for the committee in advance because of the  
25 nature of this project, and because of the representations

1 from the Applicant concerning the ability of the Google  
2 tour to accurately portray the topography and wildlife in  
3 the project.

4 I'm certainly willing to talk about going on the  
5 tour. I realize that it's not a particularly hospitable  
6 time of the year to go hiking through this territory, but  
7 if there's any member of the committee that would like to  
8 have an onsite tour scheduled, let's talk about that now.

9 MEMBER PALMER: Mr. Chairman, I'm still suffering  
10 from post tour trauma.

11 MEMBER YOULE: I'm happy with the virtual tour.

12 CHMN. FOREMAN: All right. If there is no  
13 sentiment for that, why, then, let's not worry about it.

14 Other questions?

15 (No response.)

16 CHMN. FOREMAN: I guess we do not have other  
17 questions. Do you have other materials to present,  
18 Mr. Acken?

19 MR. ACKEN: Chairman Foreman, that concludes our  
20 direct case. I would like to move to admit Exhibits APS-1  
21 through 11 at this time.

22 CHMN. FOREMAN: All right. I believe we have had  
23 testimony concerning APS-1, which is the application  
24 modified, and 2, 3, 4, 5, 6, 7, 8. Exhibit 9 is the  
25 notice of filing, and I presume that that is an exact copy

1 of what was filed with Docket Control; is that correct?

2 MR. ACKEN: Yes.

3 CHMN. FOREMAN: And 10 is the State Land  
4 Department memorandum to which the witnesses previously  
5 referred; is that correct?

6 MR. ACKEN: That is correct.

7 CHMN. FOREMAN: And then 11 is the proposed  
8 Certificate of Environmental Compatibility.

9 MR. ACKEN: Correct. That we filed, I believe it  
10 was on the 8th, in Docket. And we'll have a copy that we  
11 can show on the screen here today for the committee's  
12 deliberations. But we thought it made sense to mark it as  
13 an exhibit as well just for clarity of the record today.

14 CHMN. FOREMAN: I think that's appropriate. I'm  
15 not going to admit it as evidence, but I will admit as  
16 evidence APS Exhibit 1, as modified, 2, 3, 4, 5, 6, 7, 8,  
17 9 and 10. Please make sure that the court reporter has a  
18 clean copy of all of those exhibits so that she'll be able  
19 to include them with the transcript.

20 (Exhibits APS-1, APS-2, APS-3, APS-4, APS-5,  
21 APS-6, APS-7, APS-8, APS-9 and APS-10 were admitted into  
22 evidence.)

23 CHMN. FOREMAN: Now, it's almost the noon hour.  
24 It seems to me that we could try and break for lunch and  
25 come back and discuss CEC language later. Does that make

1 sense to everybody?

2 I think if we get into it now, we run the risk of  
3 having stomachs grumbling. So let's do that. We'll take  
4 a lunch recess. We'll plan on being back at 1:30 and  
5 begin the consideration of the proposed CEC.

6 There was some language referred to when we  
7 discussed the maintenance of appropriate gates and  
8 cattleguards. I have a draft that I just scratched  
9 together here thinking about it. And if you folks have  
10 language that you would like to take a look at, too, but I  
11 would like to talk to you folks after we go off the record  
12 here so we could have that prepared for discussion at  
13 1:30.

14 MR. ACKEN: Certainly. Thank you.

15 CHMN. FOREMAN: All right. We'll take our  
16 recess. We'll be back at 1:30.

17 (A recess was taken from 11:51 a.m. to 1:31 p.m.)

18 CHMN. FOREMAN: All right. Let's see if we can  
19 get back to order.

20 Now, we have reached the point where -- do we  
21 have anything else to present from the Applicant, or does  
22 the Applicant have anything additional to present to the  
23 committee? I guess that would be a better way to put it.

24 MR. ACKEN: Chairman Foreman, no, not at this  
25 time.

1 CHMN. FOREMAN: All right. We have as Exhibit 11  
2 in the notebooks, a proposed certificate. It has  
3 conditions attached. Again, I'm open to starting at the  
4 beginning, going to the end, or starting with the  
5 conditions and moving back.

6 MEMBER NOLAND: May I ask a question?

7 CHMN. FOREMAN: Sure.

8 MR. ACKEN: And Chairman Foreman, if I might, we  
9 do have the ability to put that CEC on the screen and show  
10 it in a Word version. The version that will be on the  
11 screen includes one additional condition that we've  
12 drafted to address your request for language concerning  
13 the cattleguards and gates for the fences for the grazing  
14 leases. So we've added that, so that will be the only  
15 difference that you see on the version on the screen  
16 compared to what is in your packet.

17 CHMN. FOREMAN: Okay, good. We have questions  
18 from committee members.

19 Member Noland.

20 MEMBER NOLAND: Mr. Chairman, Mr. Acken. And I'm  
21 sorry for always doing away with your well-ordered life,  
22 Mr. Chairman. I got you to start from the end and go  
23 forward, and now I'm going to start in the middle just  
24 with a question.

25 Can you point me to the condition that would

1 relate to the BLM land and the concerns expressed by  
2 Committee Member Mundell about addressing the Indian tribe  
3 concerns? I couldn't pick it out and he couldn't quite  
4 either. So if you could just direct me to that, then  
5 we'll deal with it when we get there.

6 MR. ACKEN: Right. And thank you, Member Noland.  
7 We took a look at this at lunch, and there are two  
8 conditions that I think are specifically on point, and  
9 there are some others that might also be tangentially  
10 related.

11 But the first one in Condition No. 1, which  
12 states that the Applicant shall obtain all required  
13 approvals and permits necessary to construct the project.  
14 One of the approvals that we need to obtain is get a  
15 right-of-way from the BLM. And as Mr. Duncan testified,  
16 BLM is going to work with the tribes as part of that  
17 process to identify what is appropriate, what is necessary  
18 to address their concerns. Until BLM is satisfied, they  
19 won't issue us a right-of-way. Once BLM is satisfied,  
20 they will. And so we think that Condition No. 1, because  
21 this is on BLM land, because they are the lead agency  
22 that's handling the tribal coordination consultation, that  
23 that condition will address it.

24 The other place that we believe is responsive to  
25 the question was actually raised by Chairman Foreman, and

1 it's the second half of Condition 6. And this is standard  
2 language that has been contained in CECs for a number of  
3 years. And this addresses the concern that, well, what  
4 happens if you find a burial ground? And state law  
5 prescribes the process by which you will address that.  
6 And so that, too, is contained in the CEC.

7           So those two conditions are the most direct on  
8 point to that. There are some others, again, that are  
9 tangentially related as well, but that is how we would  
10 propose to address the tribal concerns at this time given  
11 the limited information that we have concerning them.  
12 Thanks.

13           MEMBER NOLAND: Thank you. And so when we get to  
14 those points, I may have some question about the specific  
15 language in No. 6, or making it a little more specific to  
16 the situation. Thank you.

17           MR. ACKEN: Thank you.

18           CHMN. FOREMAN: Other thoughts?

19           Member Eberhart.

20           MEMBER EBERHART: Thank you, Mr. Chairman.

21           One question I had was is there -- or what will  
22 the Applicant do if -- I understand that State Land has  
23 not reviewed the application yet. What would transpire if  
24 they reject your application, and do you have to come back  
25 to the committee for a revised alignment?

1 MR. ACKEN: Member Eberhart, we certainly hope  
2 that we don't come to that, that outcome. We think that  
3 the route before you today is a good route, and we think  
4 that State Land will ultimately grant a right-of-way.

5 That's not responsive to your question, so let me  
6 try to address it. As I say, we have two options. One,  
7 we can come back to this committee and perhaps to the BLM,  
8 if necessary, seeking an alternative route. And the other  
9 is to pursue other options with the State Land so that we  
10 can get the right-of-way that we've requested on state  
11 land.

12 MEMBER EBERHART: Mr. Chairman, Mr. Acken, would  
13 it be feasible to have an alternative route for that  
14 .4 miles? And I think it was one of the alternatives. I  
15 don't know if that's been studied and would fulfill the  
16 requirements of the BLM EA to have an Alternative  
17 Preferred No. 2, or something like, that would be within  
18 the BLM land?

19 MR. ACKEN: I believe what you're referring to is  
20 what was called the -- the BLM Alternate Link, which would  
21 follow the section line boundary between BLM land and  
22 state land. So that was an alternative that was studied.  
23 As you saw the pictures, that's where the boulder field is  
24 located. That's going to be a very difficult route to  
25 build. You have got engineering issues, you've got cost

1 issues, and you have environmental impacts associated with  
2 that.

3 Hold on one moment.

4 (Brief off-the-record discussion.)

5 MR. ACKEN: So those are the reasons why we  
6 brought forward the preferred route.

7 Now, to your question about having a backup plan.  
8 We suppose, you know, if the right steps were taken, if  
9 State Land were here perhaps, if the BLM was supportive,  
10 you could have another alternative that was on one or the  
11 others property. One thing that could be done in this  
12 case would be to expand the corridor north to the state  
13 land boundary.

14 I know it's something that the committee has  
15 looked at on a case-by-case basis. Typically, before you  
16 would do that, you would want State Land to express their  
17 position on it, and I don't believe that they're still  
18 here today. So that's going to make that a bit of a  
19 challenge, and that's why we're requesting the preferred  
20 route.

21 MEMBER EBERHART: Well, it's obviously the  
22 Applicant's case. I'm not trying to tell you what to do.  
23 But I was just trying to think of a way that you wouldn't  
24 have to come back to this committee should State Land deny  
25 your application. Particularly when I looked at the

1 virtual tour, the boulders didn't -- from that one  
2 photograph, did not look that close together to me for --  
3 I think there was testimony there's only two poles  
4 proposed in the state land area, with a footprint of less  
5 than 3-foot diameter.

6           It seemed to me that, you know, for a total of  
7 whatever that is, 20-square feet, you might be able to  
8 find somewhere in that boulder field within the BLM land  
9 to locate two poles. But it's the Applicant's decision  
10 what to do on that.

11           MR. ACKEN: And if I might, with respect to the  
12 actual disturbance associated with the poles, you are  
13 correct. The Applicant's concern with the boulder field  
14 is we have to be able to have ongoing access, which means  
15 we're building new roads. Whereas, if we follow Bruce  
16 Mine Road, we don't need a new access road. So that's  
17 really where the ground disturbance comes is more building  
18 of an access road.

19           Again, if the committee has some concerns, I  
20 think the thing that could be done today would be a  
21 finding from the committee to expand the corridor at the  
22 state land boundary, so that would give us the flexibility  
23 to work with State Land. If that's what they preferred,  
24 we could do that without coming back to the committee and  
25 the Commission. But that would require this committee to

1 make a finding that that is not a substantial change,  
2 because what we noticed was a 200-foot corridor.

3 CHMN. FOREMAN: Member Youle.

4 MEMBER YOULE: To that point also, as I recall  
5 when Mr. Dietrich was testifying on behalf of State Land,  
6 he said specifically that they were not opposed to the  
7 corridor itself as identified, but that it was a  
8 procedural issue.

9 Do you have any indication that it is more than a  
10 procedural issue at this point?

11 MR. ACKEN: We don't have any more indication  
12 than what is before you. You know, as Mr. Herndon  
13 testified, we originally had discussions with State Land  
14 back in November and this was not raised as a concern.  
15 We're optimistic that we can work with them on the route  
16 that we've brought forward to you today.

17 MEMBER YOULE: Because with that assurance, at  
18 least that statement by Mr. Dietrich, I am more  
19 comfortable without changing the corridor at this point  
20 and expanding it. I don't know what can of worms we open  
21 up on that.

22 CHMN. FOREMAN: Let me ask you, Mr. Acken, you  
23 just suggested something that we hadn't thought of before,  
24 or at least I hadn't thought of before, and that would be  
25 to solve the issue of cutting directly across BLM land and

1 avoiding the little elbow that goes down into state land  
2 by widening the corridor on -- I take it, it would be the  
3 north side of that little elbow that reaches down into  
4 state land.

5 How wide would it have to be widened in order for  
6 it to be usable by you?

7 MR. ACKEN: I'm not sure. We'll try to get you  
8 an answer of how wide that separation is.

9 MR. DUNCAN: My understanding is that it's  
10 approximately 500 feet to the north of the existing  
11 proposed route.

12 CHMN. FOREMAN: So the centerline of the proposed  
13 route is approximately 500 feet south of the borderline  
14 between BLM land and state land. Am I understanding you  
15 correctly?

16 MR. DUNCAN: Yes, as I understand it.

17 CHMN. FOREMAN: So we would have to extend the  
18 corridor at least 500 feet north in order to get 100 feet  
19 inside the BLM land. Is that --

20 MR. ACKEN: Well, Chairman Foreman, let me speak  
21 to that. We would not propose that you expand it onto the  
22 BLM land in that area, because that would require us to go  
23 back to the BLM.

24 What we had heard from State Land in various  
25 discussions, and I think it's in the letter that they sent

1 to the Applicant, is they prefer section lines to the  
2 extent that's possible. Our understanding is they would  
3 be okay with an alignment on state land if it was on the  
4 section line.

5 And so we would not ask -- if you decide you want  
6 to go that route, we would not ask that that corridor be  
7 extended onto BLM land, because that would trigger some  
8 amendments to the NEPA process that has gone on so far.

9 CHMN. FOREMAN: And I'm not indicating that I'm  
10 in favor of this. I'm just trying to understand it. So  
11 this proposal would involve, then, placing, I presume, two  
12 poles on the borderline between the BLM land and the State  
13 Land Department land. Oh, and would those be, then, in  
14 the midst of the boulder field that you talked about?

15 MR. HERNDON: Chairman Foreman, committee  
16 members, maybe I can add to that a little bit.

17 If we move north with the alignment, I believe  
18 now we're talking more than two poles. And I'll use the  
19 map here to articulate or show what I'm talking about. We  
20 would be coming in from BLM land down into state to that  
21 angle point there, and then straight across to another  
22 angle point with another pole. So two poles in that area.

23 And as you can see, if we move north, now see how  
24 wide that area is down there? It's about four-tenths of a  
25 mile or something like that. If you move north up to

1 toward the section line, you're talking about a much  
2 greater distance now along the section line. So in all  
3 likelihood, we're talking now more than two poles.

4 But again, the letter that the State Land  
5 Department sent, the latest one that was dated, I believe,  
6 May 7, articulates that their preference would be to have  
7 the line along the section line. So I think in this  
8 particular case, if there was a way that we can come up  
9 with language that expands the corridor from the existing  
10 alignment north to the section line between state land and  
11 BLM, and have the opportunity to stay on state land but  
12 along the section line, I think that would serve our  
13 purpose and solve that particular problem.

14 CHMN. FOREMAN: All right. Well, let's -- I  
15 guess maybe we should talk a little bit about this amongst  
16 the committee members. It does pose a legal issue, and  
17 the legal issue would be whether the notice that was  
18 provided is legally sufficient for adopting a CEC that  
19 would be outside -- that would authorize the building of  
20 the towers outside of the corridor of the proposed line  
21 and corridor in the noticed CEC.

22 I think we had an issue concerning that in the  
23 last -- in No. 138 that arose a couple of times. And I  
24 think that as Mr. Acken made reference to it, the question  
25 would be whether there was a substantial change or

1 substantial deviation.

2 And Counsel, your argument in that regard would  
3 be?

4 MR. ACKEN: Thank you, Chairman. Well, the first  
5 point that I want to make on this is that we are  
6 comfortable with the request that we've made and believe  
7 that the corridor as requested will be approved by State  
8 Land. To the extent that the committee has concerns and  
9 wishes more flexibility, the argument would be that  
10 because we're dealing with one landowner, State Land,  
11 there's a letter from State Land that says that they would  
12 be comfortable with a section line alignment, that then  
13 you would have the authority as a committee to find that  
14 there was no substantial change and expand the corridor.

15 CHMN. FOREMAN: Okay. All right. Does anybody  
16 else want to discuss that issue further?

17 Member Rasmussen.

18 MEMBER RASMUSSEN: Yes, Mr. Chairman. I kind of  
19 think this is sort of a nonissue for the Applicant that  
20 we're trying to solve.

21 It would appear to be more engineering, more cost  
22 to go to the section line. It would appear that they're  
23 inclined to believe that they're going to get State Land  
24 approval. I'm inclined not to change the width of the  
25 corridor at that point.

1 CHMN. FOREMAN: Okay. Member Eberhart.

2 MEMBER EBERHART: Thank you, Mr. Chairman. I  
3 agree with that. I did want to -- for the record, is that  
4 letter from State Land, is that an exhibit? The letter  
5 that you referenced, Mr. Herndon?

6 MR. ACKEN: Member Eberhart, the letter that  
7 Mr. Herndon was referring to was a letter addressed to  
8 Chairman Foreman, dated May 7. We did not mark it as a  
9 separate exhibit. My understanding is it has been filed  
10 in the docket. And to the extent that we've got a final  
11 copy, we'll be happy to make copies so folks can review  
12 it. But it was a letter dated May 7, to Chairman Foreman.

13 MEMBER EBERHART: Thank you.

14 CHMN. FOREMAN: Since reference has been made to  
15 it, I would like to have it marked as Exhibit APS-12 so it  
16 can be placed in the record. And if members of the  
17 committee want to take a look at it before we go on,  
18 that's fine. I'm not enthused about the corridor widening  
19 option, but if there are other members of the panel who  
20 are, then we can certainly pursue that.

21 MR. ACKEN: So just so the record is complete,  
22 I'm not sure that May 7 date is correct. It might be a  
23 later date.

24 Okay. It was May 7.

25 CHMN. FOREMAN: All right. Why don't we have

1 that marked as Exhibit APS-12, and we'll admit that into  
2 the evidence so it's a part of the record in this matter.

3 (Exhibit APS-12 was admitted into evidence.)

4 CHMN. FOREMAN: All right. Other thoughts, other  
5 issues that folks want to discuss before we get down to  
6 talking about language?

7 (No response.)

8 CHMN. FOREMAN: Do we want to go back and pursue  
9 the issues with regard to the Indian or Native American  
10 site issue?

11 Member Mundell.

12 MEMBER MUNDELL: Thank you, Mr. Chairman. I  
13 think Member Noland was going to have some -- I thought  
14 she said she was going to have some language.

15 The only comment I have on Paragraph No. 6 is, as  
16 I understand it, that applies to private land. You  
17 referenced us to the second part of that paragraph, but it  
18 says -- it talks about on private land. So I do think we  
19 probably do need to clarify on -- as I understand it, the  
20 issue that we're talking about was on public land; is that  
21 correct?

22 MR. ACKEN: Member Mundell, that is correct. And  
23 the first part of Condition 6 is a broader statement that  
24 applies to state and government lands. So when you're on  
25 state land or federal land, you have a broader obligation.

1 So that would most certainly include not only burial  
2 remains, but any archaeological or paleontological or  
3 historical site.

4 MEMBER MUNDELL: Well, it says state, county, or  
5 municipal land, and it's referring to a state statute, and  
6 then the second paragraph talks about private land. And I  
7 know you referenced Paragraph No. 1, but maybe we need  
8 just to clarify.

9 I have seen in other CECs where we've been -- as  
10 I recall, I think it was the one in Tucson, where we were  
11 fairly specific about federal land, but we'll see how it  
12 proceeds.

13 MR. ACKEN: Member Mundell, one way to address  
14 your concern might be just to omit the phrase, "on private  
15 land." Then it makes it clear that it applies to all  
16 lands.

17 MEMBER MUNDELL: Very good. That makes sense. I  
18 would agree with you, Counsel. Thank you.

19 CHMN. FOREMAN: Well, is there a paralleling  
20 federal agency that would have jurisdiction over  
21 archaeological, et cetera, stuff that might be turned up  
22 as a part of the construction or maintenance?

23 MR. ACKEN: Chairman Foreman, I believe BLM would  
24 have jurisdiction in that event.

25 CHMN. FOREMAN: So if you added -- the sentence

1 as it's written would require notification of the Director  
2 of the Arizona State Museum pursuant to a state statute.  
3 And I assume you wouldn't oppose, "and notification of any  
4 appropriate federal agency," or, "the notification of the  
5 Bureau of Land Management"?

6 MR. ACKEN: That would be fine.

7 CHMN. FOREMAN: Okay. Why don't we just put,  
8 "and the appropriate federal agency."

9 MEMBER NOLAND: And any.

10 CHMN. FOREMAN: Okay, "and any appropriate  
11 federal agency."

12 Very good. Does that work for everybody?

13 (No response.)

14 CHMN. FOREMAN: All right. Are there other,  
15 then, issues that we want to address before we start  
16 moving through this?

17 (No response.)

18 CHMN. FOREMAN: All right. Let's move back,  
19 then, to the beginning of the proposed CEC. First off, on  
20 Page 2, I think you probably should delete reference to  
21 Gregg Houtz. He's not here. Everyone else is.

22 And as far as the sociology of Lewis and Roca is  
23 concerned, is it -- even though Mr. Campbell has been  
24 here, it looks like he's been here primarily for  
25 ornamental purposes.

1 Does he still get first billing?

2 MR. ACKEN: And what a fine ornament he is.

3 MR. CAMPBELL: I'm just eye candy at this point.

4 CHMN. FOREMAN: All right. Well, however you  
5 wish.

6 MR. ACKEN: Actually, it's however the committee  
7 wishes. It matters not to us.

8 CHMN. FOREMAN: We don't have to go back to the  
9 office.

10 All right. Does anyone have any issues, then,  
11 with anything on Pages 1 and 2?

12 MEMBER YOULE: Mr. Chairman, I think on Page 1 it  
13 references hearings on May 18 and 19. Assuming we are  
14 wrapping up today, you may want to just change that to  
15 May 18.

16 CHMN. FOREMAN: Take out, "and 19."

17 MEMBER YOULE: Right.

18 CHMN. FOREMAN: I like optimism. We'll delete,  
19 "and 19."

20 Anything on Page 2?

21 MEMBER EBERHART: Mr. Chairman, on Line 17.

22 CHMN. FOREMAN: On Page 1 or Page 2?

23 MEMBER EBERHART: Page 1.

24 CHMN. FOREMAN: Page 1, Line 17.

25 MEMBER EBERHART: The "s" on the word,

1 "hearings."

2 CHMN. FOREMAN: Very good. "Held a public  
3 hearing on May 18."

4 Very good. Anything else on Page 1?  
5 (No response.)

6 CHMN. FOREMAN: All right. Page 2, Page 3.

7 MEMBER YOULE: On Page 2, Mr. Chairman, on  
8 Line 16, then you're going to want to singularize  
9 "hearings" again there.

10 CHMN. FOREMAN: Good. Take the "s" off of  
11 "hearings."

12 I guess we have only one party, so we only need  
13 one appearance, and take the "s" out of "hearings" in 18.  
14 So we would have appearance of the, I think, Applicant,  
15 rather than parties.

16 MEMBER WHALEN: Take Mr. Houtz off. Did we take  
17 him off? Did I miss that?

18 CHMN. FOREMAN: Yes.

19 All right. We'll assume the legal description is  
20 correct. And there will be an Exhibit A that will have  
21 the legal description described as it is in the notice?

22 MR. ACKEN: What we propose for Exhibit A is the  
23 map that is shown on the back side of your placemat, which  
24 was also attached to the public notice and was a slide  
25 used in the testimony here today.

1 CHMN. FOREMAN: Okay. That map plus the legal  
2 description that's there on the page; is that correct?

3 MR. ACKEN: With respect to Exhibit A, we were  
4 thinking of just using the map. You have the description.  
5 It will match what is already on the text of the CEC.

6 CHMN. FOREMAN: Right. So you will have the  
7 legal description that is in the text of the CEC, and the  
8 map, which will be Exhibit A.

9 MR. ACKEN: I follow. Yes.

10 CHMN. FOREMAN: Okay. Good.

11 Member Eberhart.

12 MEMBER EBERHART: Mr. Chairman, I just wanted to  
13 clarify. The ultimate right-of-way you're buying is  
14 100 feet in width?

15 MR. ACKEN: That's correct.

16 MEMBER EBERHART: There's a corridor of 200-feet  
17 wide that you are looking at, but you're not going to buy  
18 200 feet, you're only going to buy 100 feet.

19 MR. ACKEN: That's correct.

20 MEMBER EBERHART: Thank you.

21 CHMN. FOREMAN: All right. Now, on the  
22 conditions, issues with regard to conditions listed on  
23 Page 3. I would like to have inserted in Paragraph 2,  
24 after "existing applicable," I would put "statutes,"  
25 comma, then go to, "ordinances, master plans, and

1 regulations of," then the various entities.

2 Anybody have a concern about that? Okay.

3 We talked about the time period, seven years. In  
4 this situation with the -- I want to phrase this as  
5 benignly as I can -- with the lack of potential dynamic  
6 growth in this area, it seems to me that it's unlikely  
7 that the environmental circumstances are likely to change  
8 dramatically over the next seven years. So it seems to me  
9 that I don't have a problem with seven as opposed to five  
10 years.

11 MR. ACKEN: And I know some members of the  
12 committee expressed some concern about the seven years.  
13 The more flexibility the better from our standpoint. If  
14 you're comfortable with the future growth patterns and  
15 think that perhaps a ten-year is more appropriate,  
16 certainly we would be amenable to that.

17 CHMN. FOREMAN: Well, does anybody want to go  
18 above seven? It seems to me that there's an opportunity  
19 for them to go to the Corporation Commission and have this  
20 extended. It seems to me that seven years is a  
21 substantial amount of time to do this project given its  
22 status.

23 MEMBER RASMUSSEN: Mr. Chairman.

24 CHMN. FOREMAN: Member Rasmussen.

25 MEMBER RASMUSSEN: I think that relates to the

1 mining operation and not necessarily growth in the Town of  
2 Bagdad or, quote, its suburbs. So I would think that the  
3 timing of seven years would be in line with what you're  
4 agreeing to do for the mining company and their plans for  
5 expansion. So I would think seven years should do that.

6 MR. ACKEN: That's correct. And the only future  
7 plans in the area are the mine expansion, and that's, as  
8 you heard the testimony today, is dependent on future  
9 global demand. So that's why some flexibility is  
10 requested.

11 MEMBER RASMUSSEN: Right.

12 CHMN. FOREMAN: All right. Then it seems to me  
13 that seven years, hopefully that's something that the  
14 company can live with.

15 All right. Anything else on Page 3?

16 (No response.)

17 CHMN. FOREMAN: Let's move along, then, to  
18 Page 4. Page 4, we already have made some changes to  
19 Paragraph 6. It looks like we need to take the period at  
20 the end of the original sentence out.

21 Now, you indicated that you had added a  
22 paragraph. Was that paragraph that dealt with the  
23 cattleguards and appropriate gates, is that at the end?

24 MR. ACKEN: That's correct.

25 CHMN. FOREMAN: Okay. Is there anything else,

1 then, on Page 4 that anybody has an issue with?

2 (No response.)

3 CHMN. FOREMAN: All right. Let's move on, then,  
4 to Page 5. We have a new paragraph, a new Paragraph 14,  
5 which says: "The Applicant will install gates and/or  
6 cattleguards at any existing fence lines crossed by new  
7 permanent access roads."

8 MEMBER MCGUIRE: Mr. Chairman.

9 CHMN. FOREMAN: Yes, Member McGuire.

10 MEMBER MCGUIRE: I have a question about the --  
11 from the letter it seems apparent that he's talking about  
12 putting the cattleguard -- a gate across over the -- right  
13 on the cattleguard.

14 I mean, is that assumed that you're going to put  
15 a gate next to it to put heavy equipment across and that  
16 kind of stuff? Typically, that's what you do, put a gate  
17 next to it so you can put livestock across and heavy  
18 equipment that's too big for the cattleguard. So there's  
19 two gates, actually, then, on each cattleguard.

20 MR. ACKEN: I see heads nodding, yes.

21 MEMBER MCGUIRE: Thank you.

22 CHMN. FOREMAN: Okay. Thank you for your input  
23 of expertise.

24 MEMBER MUNDELL: Mr. Chairman, to that point, to  
25 Jeff's point, do we need to clarify that, then, or is it

1 sufficient based on your expertise? I mean, I heard him  
2 say yes into the record, but is the verbiage in the CEC  
3 sufficient?

4 CHMN. FOREMAN: Well, it seems to me there are  
5 two ways you could do that. One would be to try and  
6 specify the configuration of the gates and cattleguards,  
7 and the second would be to say gates and cattleguards  
8 acceptable to local landowner, which would be Mr. Kellis.  
9 Is that --

10 MR. ACKEN: That should work. Some of these  
11 gates will be on land that's owned by or managed by BLM or  
12 state land; is that correct?

13 Some of them will be on BLM land. So if it says  
14 acceptable to the landowner, it could be BLM, it could be  
15 Mr. Kellis. But in any event, we'll be working with them.

16 CHMN. FOREMAN: So if you put, "gates and/or  
17 cattleguards acceptable to the landowner at any existing  
18 fence lines crossed by new permanent access roads."

19 MEMBER McGUIRE: It probably should say, "and,"  
20 "BLM and the landowner."

21 CHMN. FOREMAN: Instead of "and/or" just put  
22 "and"?

23 MEMBER McGUIRE: A lot of times the fence belongs  
24 to the rancher even though it's on BLM land.

25 CHMN. FOREMAN: Acceptable to the landowner or

1 what, Jeff? Lessee?

2 MEMBER MCGUIRE: I would just say it's acceptable  
3 to both the lessee and the lessor, because the fence might  
4 belong to either one also.

5 MEMBER NOLAND: I see.

6 CHMN. FOREMAN: So owners and/or lessees?

7 MEMBER MCGUIRE: Yeah. Sure.

8 CHMN. FOREMAN: So landowners and lessees.

9 So we've got, "gates and/or cattleguards and  
10 owners and/or lessees. Probably need an "and" on the end.  
11 Does that work for everybody?

12 (No response.)

13 CHMN. FOREMAN: All right. Very good.

14 Anything else, then, on Page 5?

15 (No response.)

16 CHMN. FOREMAN: Anything on Page 6?

17 (No response.)

18 CHMN. FOREMAN: All right. Very good.

19 Member Mundell.

20 MEMBER MUNDELL: We don't really have a Page 7,  
21 but don't we normally have a certification, or am I  
22 getting the cart before the horse? Usually you have the  
23 executive director of the Corporation Commission  
24 certification somewhere on here. It's not on there.

25 MR. ACKEN: No. 13 is the annual

1 self-certification condition. Is that what you're  
2 referring to?

3 CHMN. FOREMAN: No. What I think he's referring  
4 to is the place where members of the Commission would have  
5 the opportunity to sign it and their signatures would be  
6 certified by the executive director's office.

7 MEMBER MUNDELL: Correct. I don't see that on  
8 here.

9 MR. ACKEN: Member Mundell, the past practice of  
10 this Applicant and most has been to draft the CEC in this  
11 manner. Then, a form of order is entered into the docket  
12 with the language that you are used to seeing for the  
13 Commission's vote at the Open Meeting. So that's  
14 typically the process. That's the only reason that it's  
15 not included.

16 MEMBER MUNDELL: No. That's a good explanation.  
17 I guess I was remembering what we did last week where  
18 we -- maybe it wasn't last week. I think it was last week  
19 where we had some old language where it said executive  
20 secretary, and we changed it to executive director, and we  
21 discussed interim versus acting. And so that was part of  
22 that CEC. But I understand your -- and I don't care which  
23 way we go. I heard your explanation. You said, "this  
24 Applicant," whereas, that Applicant did it a different  
25 way. So I don't care.

1 CHMN. FOREMAN: All right. Well, it's not going  
2 to be very much use unless it's affirmed and approved by  
3 the Corporation Commission. So we'll leave it to you to  
4 try and come up with the appropriate form and verbiage for  
5 that. I guess our job ends at the signature line down  
6 there.

7 MR. ACKEN: And Mr. Mundell makes a good point.  
8 With Staff not being a party in this matter, that's  
9 typically a role that they played after this process. So  
10 it's something that we need to keep in mind before we go  
11 to the Commission.

12 CHMN. FOREMAN: Okay. Well, do I hear a motion,  
13 then, to approve the CEC?

14 MEMBER YOULE: I so move.

15 MEMBER RASMUSSEN: Second.

16 CHMN. FOREMAN: We have a motion and a second to  
17 approve the CEC as modified.

18 Any discussion?

19 (No response.)

20 CHMN. FOREMAN: All right.

21 MEMBER PALMER: Mr. Chairman, I feel bound to  
22 reveal the humorous paradox, if you would let me do that.

23 MEMBER MUNDELL: We're all waiting with baited  
24 breath, Mr. Palmer.

25 MEMBER PALMER: This committee was created by

1 statute 38 years ago, and sitings of high voltage lines  
2 and power plants are subject to the content of that  
3 statute. In this instance, the ground disturbance, the  
4 total ground disturbance from this project, including the  
5 access roads and the footprint of the 25 to 30 monopoles  
6 or H-frames, is probably less than 2 acres, yet the mine  
7 is going to disturb a section. The polygon for the  
8 expansion of the mine is roughly a section in size, and  
9 they're not subject to any of this, including NEPA.

10 So it's just an interesting paradox that the  
11 effect on -- and I'm not critical of strip mining. Don't  
12 misunderstand me.

13 MEMBER YOULE: Open pit.

14 MEMBER PALMER: God forbid. But that is an  
15 interesting issue, and also that this mine is subject to  
16 1873 mining law, which exempts mines west of the  
17 Mississippi from reclamation requirements. So it's  
18 interesting that we go through these kind of machinations  
19 for 2 acres of disturbed land, and yet next door is an  
20 operation that will have a significantly greater impact.  
21 That's the paradox for the day, guys. That's it.

22 CHMN. FOREMAN: Very good.

23 MEMBER NOLAND: Mr. Chairman, we would have  
24 finished this in record time, more so than last week's  
25 hearing, had we not heard that humorous paradox.

1 CHMN. FOREMAN: All right. Well, let's have a  
2 roll call here.

3 Member Eberhart.

4 MEMBER EBERHART: Aye.

5 CHMN. FOREMAN: Member McGuire.

6 MEMBER MCGUIRE: Aye.

7 CHMN. FOREMAN: Member Mundell.

8 MEMBER MUNDELL: Aye.

9 CHMN. FOREMAN: Member Noland.

10 MEMBER NOLAND: Aye.

11 CHMN. FOREMAN: Member Palmer.

12 MEMBER PALMER: Aye.

13 CHMN. FOREMAN: Member Rasmussen.

14 MEMBER RASMUSSEN: Aye.

15 CHMN. FOREMAN: Member Whalen.

16 MEMBER WHALEN: Aye.

17 CHMN. FOREMAN: Member Wong.

18 MEMBER WONG: Aye.

19 CHMN. FOREMAN: Member Youle.

20 MEMBER YOULE: Aye.

21 CHMN. FOREMAN: And the Chair votes aye.

22 By a vote of ten to zero, the Certificate of  
23 Environmental Compatibility offered and modified by our  
24 debate is approved.

25 Are there other issues that we need to address?

1 (No response.)

2 CHMN. FOREMAN: I would ask that counsel provide  
3 the chair with a copy of the amended CEC, amended  
4 according to our debate here and as we have approved,  
5 within the next five days as I set forth in the procedural  
6 order that I previously entered.

7 Do I hear a motion to adjourn?

8 MEMBER NOLAND: So moved.

9 MEMBER YOULE: Second.

10 CHMN. FOREMAN: It's been moved and seconded that  
11 we adjourn. Is there any objection?

12 (No response.)

13 CHMN. FOREMAN: No objection. We'll show  
14 unanimous consent. We are adjourned. Thank you all for  
15 coming.

16 (The Evidentiary Hearing concluded at 2:15 p.m.)

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1 STATE OF ARIZONA     )  
                              )   ss.  
2 COUNTY OF MARICOPA )

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4               I, MICHELE E. BALMER, Certified Reporter  
5 No. 50489 for the State of Arizona, do hereby certify that  
6 the foregoing printed pages constitute a full, true and  
7 accurate transcript of the proceedings had in the  
8 foregoing matter, all done to the best of my skill and  
9 ability.

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11               WITNESS my hand this 20th day of May, 2009.

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*Michele E. Balmer*

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MICHELE E. BALMER  
Certified Reporter  
Certificate No. 50489